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and

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This issue contains:

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T.D. 00–57 and 00–58

General Notices

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Parts 10, 12, 18, 24, 111, 113, 114,
125, 134, 145, 162, 171, and 172

(T.D. 00–57)

RIN 1515–AC01

PETITIONS FOR RELIEF: SEIZURES, PENALTIES, AND LIQUIDATED DAMAGES

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document revises the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. Parts 171 and 172 of the Customs Regulations are recrafted in this rule to include petition processing in seizure and unsecured penalty cases under Part 171 and liquidated damages and secured penalty petition processing under Part 172. The document revises the regulations to allow more flexibility and useful contact with Government officials in an effort to make the administration of penalty, liquidated damages and seizure cases more efficient. These regulations eliminate needless or redundant provisions.

EFFECTIVE DATE: October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202–927–2344.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under the provisions of sections 618 and 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 and 1623), section 320 of title 46, United States Code App. (46 U.S.C. App. 320), and section 5321 of title 31, United States Code (31 U.S.C. 5321), the Secretary of the Treasury is empowered to remit forfeitures, mitigate penalties, or cancel claims arising from violation of Customs bonds upon terms and conditions that he deems appropriate. Under sections 66 and 624 of the Tariff Act

of 1930, as amended (19 U.S.C. 66 and 1624), the Secretary is authorized to issue regulations necessary to carry out the provisions of the Tariff Act. Consistent with that authority, Parts 171 (relating to seizures and penalties) and 172 (relating to liquidated damages) of the Customs Regulations (19 CFR Parts 171 and 172) were promulgated to provide for the petitioning process in order to allow for the orderly remission of forfeitures, mitigation of penalties, and cancellation of claims for liquidated damages.

In a Notice of Proposed Rulemaking published in the Federal Register (63 FR 5329) on February 2, 1998, Customs proposed to substantially revise Parts 171 and 172 of the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases to make the proposed regulations briefer and to allow more flexibility and useful contact with government officials in an effort to administer cases in the most efficient way possible. The amendments to the regulations were also proposed to eliminate needless or redundant provisions.

SUMMARY OF PROPOSAL

Below is a summary of the Notice of Proposed Rulemaking:

1. The scope of Parts 171 and 172 was proposed to be changed. Part 171, as proposed, related to unsecured fines and penalties and all seizure and forfeiture cases. Inasmuch as the payment of certain penalties is guaranteed by the conditions of the International Carrier Bond and, therefore, can involve demands against sureties, the provisions of Part 172 were proposed to be amended to relate to all claims for liquidated damages and penalties secured by a bond. This proposed change would guarantee that all such claims against sureties would be handled in a consistent manner.

2. The proposed regulations anticipated that electronic filing of petitions is an inevitability even though Customs does not currently have, on a nationwide basis, the capabilities to accept petitions electronically. Accordingly, the proposed regulations reflected the acceptance of electronic signatures and eliminated the requirement of duplicate copies if an electronic petition is filed.

3. The proposed regulations required that petitions for relief be signed by the petitioner, his attorney-at-law or a Customs broker, but would allow others, in certain non-commercial violations (such as passenger/baggage-line violations), to file petitions on behalf of non-English speaking claimants to property or other petitioners who have some disability that may impede the ability to file a petition. Instances have occurred where such petitions were rejected because they did not meet the signature requirements of the current regulations. A strict reading of the current regulations would bar Customs from considering those petitions. This position caused needless delay in administrative processing of cases. As proposed, the process would be opened in these situations and efficiency would be promoted by allowing, in non-commercial violations, a non-English speaking petitioner or petitioner who

has a disability which may impede his ability to file a petition to enlist a family member or other representative to file a petition on his behalf.

4. Under the current regulations Customs may limit the petitioning period to 7 days in cases involving violations of 19 U.S.C. 1592 when the running of the statute of limitations is imminent. As Customs finds no reason to limit the 7-day petitioning period option to just cases involving violations of 19 U.S.C. 1592, it was proposed to extend the 7-day rule to all cases and clarify that it is 7 working days, rather than calendar days.

5. The regulatory section entitled "Additional evidence required with certain petitions" was proposed to be eliminated as unnecessary. The proposed new § 171.2 indicated that the claimant or petitioner must establish a petitionable interest in seized property. How that proof is presented is not a subject requiring control by regulation.

6. The current regulations provide that there is a right to make an oral presentation to seek relief from a penalty incurred for a violation of 19 U.S.C. 1592 for which proceedings commenced after December 31, 1978, and that oral presentations seeking relief for other penalties incurred may be allowed at the discretion of Customs. It was proposed to simply remove the reference to cases commenced subsequent to December 31, 1978, as that provision has become obsolete with the passage of time.

7. Title VI of the North American Free Trade Agreement Implementation Act (known commonly as the Customs Modernization Act) (Pub.L. 103–182, 107 Stat. 2057) amended the provisions of 19 U.S.C. 1595a(c) to provide for the seizure and forfeiture of stolen property. This amendment rendered current § 171.22(c) obsolete, as those provisions of the new statute are applicable to any stolen property, not only that stolen in Canada and brought into the United States. Accordingly, it was proposed to eliminate that provision.

8. Mitigation guidelines for monetary penalties assessed pursuant to 19 U.S.C. 1592 are currently published as Appendix B to Part 171 of the Regulations. Since the guidelines are now published, the provisions of § 171.23 of the regulations, making these guidelines available upon request, became obsolete and that section was proposed to be eliminated.

9. The offices of Regional Commissioner and District Director were eliminated under Customs reorganization; therefore, all references to those offices and delegations of authority to those individuals to decide petitions and supplemental petitions for relief became obsolete. In Treasury Decision 95–78 (T.D. 95–78, 60 FR 48645, September 20, 1995), Customs published an Interim Rule which amended the regulations and authorized Fines, Penalties, and Forfeitures Officers to decide petitions for relief, and certain designated Headquarters officials assigned to field locations to decide supplemental and second supplemental petitions for relief in certain cases (although the Notice of Proposed Rulemaking proposed the elimination of second supplemental petitions, as discussed later herein). T.D. 95–78 was later finalized by Trea-

sury Decision 99–27 (T.D. 99–27, 64 FR 13673, March 22, 1999). Changes promulgated by the interim rule were reflected in the Notice of Proposed Rulemaking.

10. Consistent with the Customs reorganization, it was proposed to remove specific delegations of mitigation authority from the body of regulatory text with the intention of affording the Secretary of the Treasury and the Commissioner of Customs the opportunity to delegate authority to decide petitions and supplemental petitions to the field through delegation orders, without the necessity of amending the regulations. It was contemplated that a separate document would be published in the Federal Register detailing the new delegations.

11. The provisions of Part 111 were proposed to be amended to eliminate the requirement of Headquarters approval of broker penalty cases assessed in excess of $10,000.

12. Novel or complex issues often arise concerning Customs policy with regard to Customs actions or potential actions relating to seizures and forfeitures, penalties (including penalty-based demands for duty), liquidated damages or penalty assessment or mitigation in cases that are otherwise within field jurisdiction because of the value of the property or the amount of the penalty or claim for liquidated damages. In those instances, Headquarters advice may need to be sought. Accordingly, it was proposed to include a section in both Parts 171 and 172 to allow any Customs officer or an alleged violator to initiate a request for advice to be submitted to the Fines, Penalties, and Forfeitures Officer for forwarding to the Chief, Penalties Branch, Office of Regulations and Rulings. It was proposed that the Fines, Penalties, and Forfeitures Officer would retain the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in such cases.

13. Under current policy, Customs officers may accept petitions filed untimely in response to claims for liquidated damages. Those petitions can be accepted at any time prior to commencement of any sanctioning action against a bond principal or the issuance of any notice to show cause against a surety. It was proposed to permit Customs to accept late petitions in penalty cases as well, but, as articulated in guidelines published for cancellation of bond charges (*see* T.D. 94–38, 59 FR 17830, April 12, 1994), lateness in filing a petition was to be factored when considering remission or mitigation of a claim and less generous relief, if otherwise merited, was to be afforded to the petitioner who files in an untimely manner.

14. The courts have consistently held that a claim for liquidated damages is not a "charge or exaction" which is properly the subject of a protest filed pursuant to the authority of 19 U.S.C. 1514. *See United States v. Toshoku America, Inc.*, 879 F.2d 815 (Fed. Cir. 1989); *Halperin Shipping Co., Inc. v. United States*, 14 CIT 438, 742 F. Supp. 1163 (1990). In light of these decisions, it was proposed to amend the regulations to in-

dicate that claims for liquidated damages and decisions on petitions are not properly the subject of a protest filed pursuant to 19 U.S.C. 1514.

15. In *Trayco, Inc. v. United States*, 994 F.2d 832 (Fed. Cir. 1993), the Court permitted a company that had petitioned for relief, received a decision on the petition and, although unhappy with the mitigation offered, paid that mitigated amount "under protest," to file suit to recover the amount paid. The Court noted that as "* * * nothing in the statute or regulations gives notice that a party may relinquish its rights to judicial review by paying a mitigated penalty and filing a second supplemental petition, we decline to hold that Trayco is estopped where it accompanied its payment with a statement expressly reserving its rights to judicial review." *Id.* at 839. Customs proposed to amend the regulations to eliminate this regulatory gap and provide that any payment made in compliance with a mitigation decision will act as an accord and satisfaction where the paying party has elected to resolve the case through the administrative process and has waived the right to sue for a refund. It was proposed that this express statement be included in all mitigation decisions offered to petitioners in order to provide full disclosure as to their administrative or judicial rights. According to the proposal, Customs will not accept payments "under protest."

16. It was proposed to eliminate second supplemental petitions. As proposed, payment of a mitigated amount would never be necessary to receive original or appellate administrative review. If a petitioner believes the underlying penalty was incorrectly assessed or the claim improperly mitigated, he would not be required to pay and then later sue for a refund of monies paid.

17. The proposed regulations included a provision allowing the deciding Customs official to reserve the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a supplemental petition in any case if less than one year remains before the statute of limitations may be asserted as a defense to all or part of that case. Upon receipt of such a waiver, any reduced time period for acceptance of a petition would not be necessary.

18. Under current § 111.95, Customs Regulations, a final determination of $1,000 or less in response to a petition for relief in a case involving assessment of a penalty for violation of the provisions of 19 U.S.C. 1641 could not be the subject of a supplemental petition. As there is no basis to single out this particular violation as not being worthy of a supplemental petition for relief, and as Customs believes all parties should have the same administrative rights, it was proposed to remove this restriction on the filing of supplemental petitions in broker penalty cases.

19. Sections 10.39(e) and (f) of the regulations, relating to the filing of petitions in cases involving breaches of the terms and conditions of temporary importation bonds (TIBs), provide for different standards of review if there has been a default with respect to all of the articles entered under bond or if there has been a default with respect to part, but not all,

of the articles entered under bond. Because this bifurcation is unnecessary, it was proposed to combine the provisions of §§ 10.39(e) and (f) to provide a single standard for review of TIB petitions without regard to whether all or part of the merchandise entered under the TIB are in breach.

20. Current § 162.48, Customs Regulations, relating to the disposition of perishable and low-value property, permits Customs, by the authority granted in section 612 of the Tariff Act of 1930, as amended (19 U.S.C. 1612), to destroy summarily low-value seized property (less than $1,000) when the costs of storing and maintaining such property are disproportionate to its value. Customs would then reimburse any successful petitioning claimant from the Treasury Forfeiture Fund. The provisions of section 667 of the Customs Modernization Act removed this $1,000 cap and permitted the summary destruction of any seized property, without regard to value, if the costs of maintaining such property were disproportionate to its value. Section 162.48 was proposed to be amended, consistent with this legislative change.

21. Finally, the provisions of Part 162 were proposed to be amended to specifically authorize Fines, Penalties, and Forfeitures Officers to accept waivers of the statute of limitations with regard to actual or potential violations arising within their respective ports. It was proposed that the Office of Regulations and Rulings would retain authority to accept waivers in established actual cases over which it has jurisdiction and a petition for relief has been filed.

Proposed conforming amendments to Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, and 162 were also set forth in the Notice of Proposed Rulemaking.

Discussion of Comments

The February 2, 1998, Notice of Proposed Rulemaking made provision for the submission of public comments on the proposed regulatory changes for consideration before adoption of those changes as a final rule. The prescribed comment period closed on April 3, 1998. A total of 18 responses to the solicitation of comments was received by Customs. The comments submitted are summarized and responded to below.

Comment:

Five commenters are opposed to the combination of §§ 10.39(e) and 10.39(f). The commenters state that current § 10.39(e) provides for relief from liquidated damages involving breach of the terms and conditions of the TIB when partial exportation or destruction of such merchandise occurs. The commenters are of the view that the proposed recrafted regulation would unfairly penalize importers on entire shipments when only a small portion may not have been exported or destroyed in the prescribed manner. Section 10.39(f) currently indicates that the amount to be tendered is determined by the value of the goods involved in the breach of the bond. The commenters assert that the proposed new regulation would not do this and it is unclear as to the level of

liability for the importer when a partial exportation or destruction occurs.

Customs Response:

The commenters' fears are misplaced. First, the proposed amendment in no way would change the provisions of § 10.39(d)(1), which governs assessment of liquidated damages for failure to export or destroy TIB merchandise in the time period prescribed by regulation. Claims will still be assessed at two times or 110 percent of the estimated duties applicable to the entry, depending on the HTSUS provision under which entry is made. The proposed regulatory text would eliminate unnecessary differences in the authority of the Fines, Penalties, and Forfeitures Officer to act on a petition for relief with regard to those cases where all of the merchandise covered under the TIB was not exported or destroyed as opposed to those cases where partial exportation or destruction occurred. The provisions of § 10.39(e)(1) through (e)(4), relating to the standards to be considered when canceling the claim upon payment of a lesser amount, are not being changed. Those standards will be applied to partial breaches as well as breaches involving all merchandise covered by a TIB entry. In accordance with this response, Customs is proceeding with combining § 10.39(e) and § 10.39(f) in the final regulatory text.

Comment:

Numerous commenters express the view that oral presentations should be granted as a matter of right in all cases.

Customs Response:

Customs does not agree that oral presentations should be granted as a matter of right in all cases, but does concede that reference to 19 U.S.C. 1593a(b)(2) regarding petitioning of penalties assessed for false drawback claims was inadvertently excluded from this proposed regulation. The provisions of 19 U.S.C. 1592(b)(2) and 19 U.S.C. 1593a(b)(2) specifically state that a person charged with a penalty thereunder shall have reasonable opportunity under 19 U.S.C. 1618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. For the most part, other statutes enforced by Customs do not provide for such an opportunity. It would be administratively burdensome to require Customs to hear oral presentations in all violations for which cases are developed. Accordingly, the regulations provide Customs with discretion to allow oral conferences in other cases. However, the final regulatory text is amended to include reference to 19 U.S.C. 1593a(b)(2).

Comment:

One commenter indicates that the regulations should be amended in a manner to require Customs to act on petitions within 120 days. The commenter states that when a petition is received, not much else has to be done by Customs and there is no basis for continued delays.

Customs Response:

Customs does not agree. When a petition is received, an investigation often must be undertaken in order to determine the veracity of statements made in that petition. This can be a time consuming process, particularly if information from foreign sources must be obtained. Additionally, there are instances when a claimant to seized property or a charged party asks that Customs delay a decision on a petition for relief. If Customs is required to adhere to a rigid decision schedule, it could work to the disadvantage of such a party. While Customs makes every effort to decide petitions for relief as expeditiously as possible, Customs sees no reason to amend the regulations to place a strict time frame on the processing of petitions.

Comment:

A comment was received from the Food and Drug Administration (FDA), indicating its concern that the provisions of proposed §§ 172.11 and 172.12 would authorize Fines, Penalties, and Forfeitures Officers to decide petitions for relief in cases involving the failure to redeliver FDA-regulated merchandise which has been refused admission. There is a concern that the Customs officers will not have the technical expertise to make such a determination.

Customs Response:

Customs appreciates FDA's concern, but notes that the provisions of 21 CFR 1.97(b), which require FDA and Customs to be in agreement with regard to the terms and conditions of cancellation of any bond charge arising from the failure to comply with FDA admissibility requirements, have not been overridden by these regulations. Fines, Penalties, and Forfeitures Officers will still be required to forward all petitions for relief in FDA cases to FDA and will follow the recommendation of FDA with regard to the disposition of those cases consistent with the regulations.

Comment:

Numerous commenters object to proposed § 171.2(e), which allows Customs to reduce the time for filing a petition for relief to no less than seven working days when fewer than 180 days remain from the date of penalty notice or seizure before the statute of limitations may be available as a defense. One commenter asks that the new regulations commit Customs to making every effort to issue notices of penalty and seizure within sufficient time so as to allow importers 30 days to file petitions for relief. Another commenter claims that this provision would interfere with a surety's right to investigate and raise appropriate defenses, if any, before deciding to extend the statute of limitations. The same commenter states that the surety should receive notice at the same time the claim is made against the principal on the bond. If at least 90 days remained before expiration of the statute of limitations, the surety should receive the full 60 days to investigate the claim and file a petition. In the alternative, the commenter suggests that Customs accept

limited waivers of the statute of limitations to enlarge the time remaining to the full 180-day period. Finally, another commenter states that Customs is now proposing to extend the 7-day petitioning period to other types of cases when the running of the statute of limitations is "imminent." The commenter suggests that Customs define the term "imminent."

Customs Response:

Customs does not agree that this provision is onerous and should be changed. It is noted that this provision is not a newly promulgated exception from the usual 30 or 60-day time periods for the filing of petitions for relief. This provision is basically unchanged from the current regulations. Under current § 19 CFR 171.12(e), Customs may shorten the petitioning period to 7 days if less than 180 days remains before the statute of limitations is to run. Because the current regulation does not distinguish between calendar or working days so as to determine the appropriate length of that 7-day period, Customs has clarified the length of this shortened petitioning period by expressly indicating that 7 working days is the minimum time period for providing a petition for relief.

Also, it should be noted that sureties have received and will continue to receive courtesy copies of notices to principals of claims for liquidated damages which are issued against any bond the sureties have written. The proposed regulations, by combining liquidated damages case processing with processing of penalties secured by bonds, insure that sureties will also receive courtesy copies of penalty notices issued against their bond principals when the sureties have written the underlying International Carrier's Bond. If anything, notification to sureties of potential liabilities has expanded.

There is no regulatory proscription against execution of waivers of the statute of limitations which would enlarge the time to 180 days from the date of issuance of the claim for liquidated damages in order to allow for the full 60-day petitioning period.

While Customs certainly aspires to avoid having to curtail the time a petitioner has to file a petition for relief and Customs attempts to issue notices of penalty, seizure or claims for liquidated damages more than 180 days prior to the running of the statute of limitations, Customs concedes that on occasion these notices do not meet that time frame. While Customs continues to strive to issue notices so as to provide the claimant with full regulatory petitioning times, such notice issuance is not always possible. Customs is of the view that continuation of the current regulatory scheme provides a reasonable method to allow for maximum administrative petitioning rights.

Further, the proposed regulatory text in § 171.2(e) includes language indicating that if a penalty is assessed or a seizure is made and less than 180 days remain from the date of the penalty notice or seizure before the statute of limitations is available as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for re-

lief. For the sake of clarity, Customs is removing the phrase "from the date of penalty notice or seizure" and is rephrasing the final regulatory text to indicate that the Fines, Penalties, and Forfeitures Officer may specify in the seizure or penalty notice a reasonable period of time for the filing of a petition for relief.

Finally, the regulatory text does not include any reference to the running of the statute of limitations being "imminent." Rather, a time certain of 180 days prior to the availability of the statute as an affirmative defense is referenced. Customs sees no reason to define the term "imminent" because it does not appear in the proposed regulation.

Comment:

Many commenters disagree with the proposal to eliminate second supplemental petitions. They consistently claim that second supplemental petitions serve an important function and provide a necessary level of review. One commenter notes that the second supplemental petition is particularly useful in vessel repair cases established for violation of 19 U.S.C. 1466, particularly when a protest decision on the vessel entry liquidation reduces the loss of revenue to be collected on that entry. As currently configured in 19 CFR 171.33(c)(2)(ii), the regulation allows for the filing of a second supplemental petition within 30 days following an administrative or judicial decision with respect to entries involved in the penalty case which reduces the loss of duties upon which the mitigated penalty amount was based. The second supplemental petition affords the petitioner the ability to obtain the proper mitigated penalty amount. In vessel repair cases, the duty involved can often be substantial. That same commenter goes on to argue that elimination of the second supplemental petition would substantially reduce the petitioner's ability to receive full mitigation. The only avenue for further relief would be litigation, the least desirable alternative.

Customs Response:

Customs agrees that an avenue for relief should be available to the party who must rely on an administrative or judicial decision which would reduce the amount of administrative penalties; however, the second supplemental petition, which requires full payment from that party prior to Customs acceptance of that second supplemental petition, places a substantial burden on that party when those same large sums are at issue.

Accordingly, in acknowledgment of the need to provide an administrative alternative to the party who would be affected by an administrative or judicial decision, Customs has decided to amend the provisions of proposed §§ 171.61 and 172.41 (relating to the filing of supplemental petitions) to allow for the filing of a supplemental petition within 60 days from an administrative or judicial decision with respect to entries involved in the penalty case which reduces the loss of duties upon which the mitigated penalty amount was based. This amendment would save petitioning rights for the party who awaits another administrative decision that would influence the outcome of its penalty case.

Notwithstanding the above, Customs remains of the view that the second supplemental petition should be eliminated. Currently, the petitioner is afforded up to two years after a decision on a supplemental petition for relief to file a second supplemental petition. That is simply too long a time to keep administrative matters open. Additionally, the *Trayco* court viewed with disfavor the regulatory requirement of payment in compliance with the decision on the supplemental petition for relief in order to obtain the third level of administrative review. Rather than prolong the process, Customs is of the view that two administrative opportunities provide sufficient levels of review for the charged party or claimant to seized property.

Comment:

Numerous comments were received with regard to Customs' proposal to allow any Customs officer or alleged violator to initiate a request for Headquarters advice with a Fines, Penalties, and Forfeitures Officer for forwarding to the Chief, Penalties Branch, Office of Regulations and Rulings. This advice request, as proposed, must relate to any novel or complex issue arising concerning Customs policy regarding Customs actions or potential actions relating to seizures and forfeitures, penalties (including penalty-based demands for duty), liquidated damages or case assessment or mitigation in cases that are otherwise within field jurisdiction because of the value of the property or the amount of the penalty or claim for liquidated damages. The Fines, Penalties, and Forfeitures Officer would retain authority to refuse to forward any request that fails to raise a qualifying issue and to seek advice from the appropriate Associate or Assistant Chief Counsel in such cases.

Reaction to this proposed regulation ranged from strongly negative (with one commenter stating "the field office is typically the source of the problem which the petitioner would like Headquarters to review, and therefore is far too interested and biased a party to determine whether that review is warranted"; and referring to this as "asking the fox to guard the chicken coop") to positively disposed, but cautious. The latter group seeks the establishment of criteria for the referral to Headquarters, seeing those criteria as being key to the effectiveness of the change. Several commenters suggest that the regulations provide for a right of appeal from the decision of the Fines, Penalties, and Forfeitures Officer to refuse referral.

Customs Response:

Customs is of the view that sufficient safeguards and guarantees have been written into the regulation to allay the fears that deserving claimants will be barred from being heard. Concomitantly, the regulation is drawn narrowly enough to prevent frivolous claims that Headquarters review is required. The Fines, Penalties, and Forfeitures Officer is and must be afforded discretion to refuse to forward a request that fails to raise a qualifying issue, but he or she is also encouraged to seek legal advice from Associate or Assistant Chief Counsel as to whether a request does raise such a qualifying issue. The regulation was not designed to

permit Headquarters review of all petitions, nor is it necessary to provide for appeal rights of a decision to disallow Headquarters review of novel and complex issues. That would impose yet another administrative layer to decide whether a claim should be heard at a Headquarters level. That would clearly not promote administrative efficiency.

Customs is also of the view that establishment in regulation of criteria to be followed for the granting of Headquarters review would be difficult. It is impossible to predict what issues might arise from Customs policies. Unlike Applications for Further Review in the protest process, mitigation decisions are acts of administrative discretion and do not have precedential value. Facts underlying the issuance of claims or the making of seizures can be very different yet involve the same statutory violation. Decisions are made within published guideline ranges. To allow further review of any act of administrative discretion would involve Headquarters review of every decision. This is not the intent of this regulatory change.

Comment:

Numerous commenters express objection to the proposal to eliminate Customs Headquarters authorization of broker penalties when such penalties are proposed for issuance in amounts in excess of $10,000.

Customs Response:

When the Tariff and Trade Act of 1984 (Pub.L. 98–573) amended 19 U.S.C. 1641 to provide for civil monetary penalties against brokers, Customs agreed with the brokerage community that the novelty of these penalties was such that Headquarters review of all proposed 19 U.S.C. 1641 penalties was necessary so as to provide guidance to the field and to identify those situations for which a penalty response was appropriate. In Treasury Decision 86–161 (T.D. 86–161, 51 FR 30345, August 26, 1986; corrected 51 FR 31760, September 5, 1986), Customs first published broker penalty assessment and mitigation guidelines by adding Appendix C to Part 171 to provide further guidance for field offices. A revision to Appendix C was published in Treasury Decision 90–20 (T.D. 90–20, 55 FR 10056, March 19, 1990.) After approximately five years of experience in assessing these penalties, Customs published Treasury Decision 91–77 (T.D. 91–77, 56 FR 46115, September 10, 1991), in which field offices were empowered to issue broker penalties without Headquarters review when the amount to be assessed did not exceed $10,000. At that point, it was believed that the agency had sufficient experience with these penalties that Headquarters review was only necessary when the most serious assessments were contemplated.

Customs is now of the view that Headquarters review of broker penalty cases is unnecessary. Headquarters does not by regulation review the issuance of any other type of penalty. There is no compelling reason to continue to approve broker penalties of any size. The Penalties Branch, Office of Regulations and Rulings, will review and decide supplemental petitions for relief in broker penalty cases when the amount

assessed exceeds $10,000, so Headquarters review will still be afforded in the more serious cases.

Comment:

Some commenters indicate that it is unnecessary for Customs, by regulation, to require proof of representation. One commenter suggests that standards of local bar associations provide adequate protections.

Customs Response:

As Customs brokers may also represent parties that have been charged with penalties or claims for liquidated damages or seek return of seized property, standards of local bar associations do not provide adequate protection. The local bar association would not have jurisdiction to discipline a Customs broker. Because Customs concedes that not every petition for relief need be accompanied by a statement of representation, the proposed regulation left this requirement to the discretion of the Fines, Penalties, and Forfeitures Officer. Accordingly, no change is made to the proposed regulations based on these comments.

Comment:

One commenter is extremely concerned about unauthorized filing of petitions and believes that petitions should be signed only by an attorney or a Customs broker. The commenter suggests that proposed § 171.1(b), which would allow a corporation's petition to be signed by "an officer or responsible supervisory official or a representative of the corporation," would allow anyone claiming to be a representative to sign a petition. In the view of the commenter, virtually every significant commercial penalty claim involves a corporation and the proposed regulatory text would eliminate any and all restrictions with regard to individuals signing on behalf of corporations.

Customs Response:

Customs disagrees with the commenter that signing of petitions by corporations should be limited to attorneys or Customs brokers because a principal can always act on its own behalf. Customs believes that when a corporation is the petitioner, it clearly can have a petition signed by an officer. Customs also believes that a large corporation may not want to require that a petition be signed by an officer in all cases and may want the flexibility to allow a responsible individual in a supervisory position or other responsible employee (such as a claims examiner) to be able to act on its behalf. Customs does agree, however, with the commenter that the proposed language may be too broad in seeming to allow any individual claiming to be a "representative" of the corporation to sign a petition for the corporation. Because the language as proposed may be read too broadly, Customs is modifying the proposed "representative of the corporation" language in the final rule to provide that a "responsible employee representative" as well as an officer or responsible individual in a supervisory position may sign a petition for a corporation.

Comment:

Proposed § 172.43 states that Customs may require a waiver of the statute of limitations as a condition precedent prior to consideration of a supplemental petition for relief if the statute will be available as a defense to all or part of a case within one year from the date of decision on an original petition for relief. One commenter suggests that this proposed language only relieves Customs from its duty to issue demands timely. It is averred that unless Customs is held accountable for issuing timely decisions on the original petition, there is no impetus for Customs to decide claims promptly.

Customs Response:

Customs does not agree with this analysis. The statute of limitations may loom as a defense for many reasons, not just because Customs did not issue a demand timely. Customs seeks the statute of limitations waiver to encourage the orderly processing of the case so as to avoid litigation. It is not now, nor has it ever been, Customs policy to delay without good cause issuance of any claim. The claimant can always refuse to provide the statute of limitations waiver and the matter can be referred for commencement of a judicial action.

Comment:

One commenter suggests that proposed § 172.22(b), relating to the payment of mitigation amounts acting as an accord and satisfaction, could compromise the rights of a surety in that it would force the surety to settle a claim because, being threatened with sanction, the surety would have to choose between obtaining a preliminary injunction or protesting the payment.

Customs Response:

Customs does not agree with the commenter. A surety is provided with courtesy copies of original demands on bond principals. When the bond principal either fails to respond or exhausts its administrative rights and does not comply with decisions on any petitions for relief, a demand on surety is issued and the surety is afforded all petitioning rights. Once the surety is provided with a mitigation decision, if the surety refuses to pay and has raised a justiciable issue, Customs will commence a collection action and the surety may have its day in court. Customs is not of the view that application of the principles of accord and satisfaction to any single payment in compliance with a mitigation decision is an event that will force the surety either to comply or go to court to avoid sanction. Accordingly, Customs believes that the regulation should be adopted as proposed.

Comment:

Another commenter strongly opposes the provisions of proposed § 171.23. The commenter states that the government will exercise greater care when it knows that its decision may be reviewed by the courts. The commenter believes that the court will only review the

question of whether a violation occurred, not the mitigation. The commenter indicates that the government should welcome rather than oppose the court's view of whether a violation occurred.

Customs Response:

Customs does not intend to deny a charged party its day in court. After Customs determines that a violation has occurred and assesses and mitigates a penalty, effects a seizure and remits a forfeiture, or assesses a claim for liquidated damages and cancels the claim upon payment of a lesser amount, all in accordance with the administrative procedure, there will be no coercion to pay. If a party wishes to have its day in court it can inform Customs that it will not pay and can wait for judicial action to be commenced.

However, Customs believes that once a party agrees to pay an administratively determined mitigation, remission or cancellation amount, the party should not be permitted also to pursue the matter in the courts. This has always been Customs view—a party can choose between administrative proceedings and judicial proceedings. This view was not, however, reflected in the regulations. Section 171.23 was proposed in reaction to the court's statement in *Trayco*, *supra.*, that "nothing in the statute or regulations gives notice that a party may relinquish its rights to judicial review by paying a mitigated penalty." The proposed regulation, once adopted, will serve to give the notice that the court stated was missing, in that payment of a penalty will act as an accord and satisfaction and bar judicial review.

It is noted that if a party chooses to pay the mitigated penalty, forfeiture remission amount or bond claim cancellation amount, one still has the right to pursue the administrative proceeding by filing a supplemental petition for relief.

Comment:

One commenter representing sureties objects to proposed § 172.13(c), which states that no action shall be taken on any petition from a principal or surety if received after issuance of a notice to show cause is issued to a surety.

Customs Response:

Customs will soon be issuing procedures with regard to the nonacceptance of bonds from delinquent sureties. Those procedures include the issuance of notices to show cause. They are being formulated with considerable consultation with the surety community. At the time a notice to show cause is issued to a surety, the surety will have already received at least six notifications of the existence of the claim. Customs does not agree that failure to accept a petition at that late a juncture in the administrative proceedings will place a chilling effect on meaningful exchanges.

Comment:

One commenter suggests that in proposed § 171.1(c)(4), Customs should not require proof of a petitionable interest in seized property

from an importer of record. The commenter suggests that this provision be amended to allow any party who may act as importer of record to file a petition for remission of a forfeiture without additional proof of a petitionable interest in the property.

Customs Response:

Customs does not agree. While Customs concedes that in the overwhelming number of cases, the importer of record will have a petitionable interest in any seized merchandise, there are situations where a Customs broker filing an entry as a nominal importer of record will have no petitionable interest in the merchandise being entered. As such, it would not be appropriate to include regulatory text that would automatically confer upon an importer of record a petitionable interest in seized property.

Comment:

One commenter suggests that the provisions of proposed § 171.21 should require a written decision with regard to a petition submitted in response to an alleged violation of 19 U.S.C. 1595a.

Customs Response:

Sections 19 U.S.C. 1592, 1593a and 1641 all specifically provide that a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based must be issued. Customs is of the view that the agency should not identify through rulemaking other violations for which written decisions will or will not be given as a matter of right. However, Customs endeavors to issue written decisions in response to all petitions, regardless of the underlying violation.

Customs notes that the proposed rule inadvertently omitted a reference to 19 U.S.C. 1593a in this section. The regulatory text has been amended to so include that statute in this provision.

Comment:

One commenter disagrees with the certification by Customs pursuant to the Regulatory Flexibility Act that the provisions of the proposed regulatory amendments, if adopted, will not have a substantial impact on a number of small entities. The commenter states that there is no credible support for the statement that small business entities are rarely repeat violators of Customs laws and, therefore, will seldom need to avail themselves of these regulatory provisions and file petitions for relief on a regular basis. The commenter provides anecdotal evidence that it had a bond principal that was a small entity that had seven delinquent liquidated damages claims. The commenter goes on to state that common sense suggests that small companies are frequent violators of the customs laws and are substantially and directly affected by the proposed regulations.

Customs Response:

Customs does not deny that some small businesses will be affected by these regulations. The statement included in the Notice of Proposed Rulemaking did not state that small companies would never be impacted, but that there would not be a significant impact on a substantial number of small entities. Prompted by the commenter 's concern, Customs, to verify its certification statement, reviewed all claims for liquidated damages (the most common sort of violation that would be incurred by a small entity) in a large port for Fiscal Year 1998. Some 830 violators were identified. Those 830 violators incurred 1,690 claims for liquidated damages, an average of two per entity. Only 34 entities incurred more than 5 claims for liquidated damages and of those 34 entities more than two-thirds were large transportation companies and retailers, clearly not small businesses. Of those 830 identified violators, (which is an unknown percentage of all businesses that deal with Customs in some form or fashion, many of whom incur no liabilities whatsoever and don't appear in any list of violators), only 11 could be identified as small businesses—slightly over one percent. In light of this sampling, Customs remains of the view that these amendments will not have a significant impact on a substantial number of small entities.

Comment:

One commenter indicates that it would be opposed to the provisions of proposed § 172.33 (which permits Customs, as a condition to accepting an offer in compromise, to require that the offeror enter into any collateral agreement or post security which is deemed necessary for the protection of the interest of the United States), if such an provision is intended to extend the period in which the surety would be liable, either by request for extension of the statute of limitations or other means.

Customs Response:

The commenter should be assured that Customs does not intend, through promulgation of this section, to extend the statute of limitations or to otherwise compromise any rights that a party may have to raise any defenses with regard to any claim brought against it.

Comment:

One commenting surety representative indicates that Customs had recently adopted a policy whereby any mitigation offered to a bond principal (and not acted on by it) would be described in the first demand on surety, and made available to the surety as a basis for settlement. The commenter urges that the revised regulation provide that this information be included in the first demand on surety and that the surety be offered a reasonable opportunity to accept the mitigation offered. In that same vein, other commenters suggest that the proposed regulatory text of §§ 171.62(a) and 172.42(a) be amended to add the following language: "In no event can the reviewing official grant less relief than contained in the decision on the original petition for relief." It is averred that this protects petitioners from the risk of having to pay a higher

penalty merely by exercising the due process right of an administrative review of the original decision.

Customs Response:

Customs does not agree with either of these comments. As to the comment of the surety, Customs offers mitigation as a matter of administrative discretion. While in the vast majority of cases the mitigation offered to the bond principal will be offered to the principal's surety, Customs does not want its mitigation policies to be dictated by regulation.

The same logic applies to Customs rejection of the proposed language limiting mitigation authority when considering a supplemental petition for relief. Facts may arise that were not available when considering the original petition for relief that would call for less generous mitigation when considering a supplemental petition for relief. As a matter of policy, Customs does not grant less generous mitigation upon review of a supplemental petition for relief than was afforded on the original petition without an articulable reason for doing so. The filing of a supplemental petition for relief questioning the decision on the original petition is never, in and of itself, an adequate reason to grant less generous relief than was afforded on the original petition. A petitioner should never be penalized for the mere act of filing a supplemental petition for relief. In order to safeguard against abuses of this type, Customs affords review of supplemental petitions for relief by officials other than those deciding the original petition. Customs cannot agree to the proposed regulatory language barring the granting of less generous mitigation in all situations inasmuch as such language would interfere with the exercise of administrative discretion.

Comment:

Finally, numerous commenters object to Customs elimination of specifically enumerated delegations of authority within the language of the regulations. One commenter states that the Notice of Proposed Rulemaking stated that additional authority is to be delegated to the Customs ports to render decisions on petitions and supplemental petitions. The commenter suggests that such further delegation will only magnify a problem of lack of uniformity between ports.

Customs Response:

Customs notes that the Notice of Proposed Rulemaking proposed to remove specific delegations of mitigation authority from the body of the regulatory text with the intention of affording the Secretary of the Treasury and the Commissioner of Customs the opportunity to delegate authority to decide petitions and supplemental petitions through delegation orders without the necessity of amending the regulations. The Notice also stated that a separate document would be published in the Federal Register detailing new delegations. It is unclear how any further delegations of authority will only magnify a problem of lack of uniformity between ports, as the commenter suggests. All ports function under the same delegations. Rather than causing a lack of unifor-

mity, those delegations promote uniformity. Accordingly, Customs disagrees with the comments and will publish this proposed regulatory text without change.

Conclusion and Other Changes

After analysis of the comments and further review of the matter, Customs has determined to adopt the amendments proposed in the Notice of Proposed Rulemaking published in the Federal Register (63 FR 5329) on February 2, 1998, with the changes mentioned in the comment discussion and with the following additional changes that are necessary to bring consistency to the regulations or to remove unnecessary language:

1. Customs has removed § 113.46 from the regulatory text. As Customs is not setting forth guidelines relating to cancellation of bond charges resulting from failure to produce documents in the regulations and is not directing the reader to the location of these guidelines, this language is unnecessary.

2. Customs has reviewed the last sentence of proposed § 171.3(a) and has determined that said sentence is unnecessary. Proposed § 171.3(a) discusses the arrangement of oral presentations in cases involving alleged violations of 19 U.S.C. 1592. In the current regulation, it was necessary to define when a proceeding was commenced because of the change in the underlying statute promulgated in 1978. Therefore, through the passage of time the sentence has become obsolete and has been eliminated.

3. The provisions of proposed § 171.64 contain an error. The language of the regulation indicates that the deciding official reserves the right to require a waiver as a condition precedent before accepting a petition for relief or supplemental petition for relief in any case where the statute of limitations will be available as a defense within one year from the date of the decision on the original petition for relief. Requirement of a waiver cannot be a condition precedent to the acceptance of an original petition for relief, provided the statute will be available as a defense within one year from the date of the decision on that petition. The regulation has been amended to eliminate the reference to petitions. The regulation is now consistent with the provisions of § 172.43.

4. In reviewing the provisions of proposed § 162.81, Customs is of the view that the ministerial acts involving the processing of statute of limitations waivers are operational in nature and need not be the subject of regulation. Accordingly, that proposed section has been removed from the final document.

5. In the regulatory text of proposed §§ 171.13(a) and 172.13(a), Customs indicated that late petitions could be accepted if the deciding official, in his or her discretion, believed the efficient administration of justice would be met. Upon further review of this proposed regulation, Customs has decided that codification of the acceptance of untimely petitions in penalty, seizure and liquidated damages cases could be construed by claimants to seized property and alleged violators as be-

stowing a right to file a late petition. While Customs concededly, as a matter of policy, has accepted late petitions in claims for liquidated damages cases and merely afforded less generous mitigation, Customs has decided that such a decision should remain a matter of policy and should not be included in regulation. Accordingly, in the final regulatory text, proposed §§ 171.13(a) and 172.13(a) have been removed. Paragraphs (b) and (c) of proposed § 171.13 have been redesignated in the final text as paragraphs (a) and (b). Paragraphs (b) and (c) in proposed § 172.13 have been redesignated in the final text as paragraphs (a) and (b).

6. Customs has also removed proposed § 171.32 from the final regulatory text and redesignated proposed § 171.33 as § 171.32. Customs Headquarters will retain all offer acceptance authority, still subject to the approval of the General Counsel of the Treasury or his delegee, in cases administered under Part 171. The proposed regulatory text regarding authority to accept offers in cases administered under Part 172 has not been changed in the final document.

7. The proposed regulatory texts in §§ 171.1 and 172.2 did not make it clear that Customs can require that petitions and any documents submitted in support of petitions be in English or have English translations provided. Accordingly, language has been added to both of the noted regulations to clarify this requirement.

8. The proposed regulatory texts in §§ 171.14 and 172.14 have been amended to reflect the fact that Headquarters advice regarding actual duty loss tenders determined by Customs pursuant to § 162.74(c) of the Customs Regulations relating to prior disclosure and actual duty loss demands made under § 162.79b of the Customs Regulations are outside the scope of those particular regulations. The last sentence of § 162.79b will be retained. This section will continue to provide for Headquarters review of any determination of actual loss of duties in which a § 1592(d) demand has been made and there is no penalty assessment, the assessed penalty is remitted in full or the penalty amount (or mitigated penalty) has been paid.

9. The proposed regulatory text in § 10.39(e) has been amended to indicate that the Fines, Penalties, and Forfeitures Officer may cancel Temporary Importation Bond liquidated damages liability upon payment of a lesser amount in accordance with delegated authority. The proposed version of this section did not include this limiting language and apparently gave unintended full claim cancellation authority to Fines, Penalties, and Forfeiture Officers in these situations.

10. The proposed rule overlooked the provisions of § 12.8 of the Customs Regulations regarding claims for liquidated damages for failure to comply with meat inspection requirements. Customs is amending § 12.8 to conform with the provisions of Part 172.

11. In the fourth sentence of § 162.74(c) the word "demanded" is removed and replaced with the word "determined". In prior disclosure,

Customs does not "demand" the actual loss of revenue. Rather, the disclosing party tenders the duty to perfect the prior disclosure.

12. Consistent with the current practice of removing unnecessary footnotes, Part 18 of the Customs Regulations has been amended by removing footnote 9 which relates to § 18.24(a).

13. On Wednesday, March 15, 2000, Customs published Treasury Decision 00–17 (T.D. 00–17) in the Federal Register (65 FR 13880), amending the regulations relating to Customs brokers. In that document, the provisions of 19 CFR 111.92 and 111.93 explain the process involving issuance of monetary penalties for violations of the laws and regulations relating to Customs brokers. For purposes of clarity, this document has redesignated the existing text of § 111.92 as paragraph (a) with minor changes and added a new paragraph (b) to distinguish between pre-penalty and penalty notices. Also, provisions of Appendix C to Part 171 of the Customs Regulations which announce guidelines for the imposition and mitigation of penalties for violation of 19 U.S.C. 1641 have been amended to remove sections which are not consistent with regulatory changes promulgated in T.D. 00–17.

It is also noted that Customs is publishing in this issue of the Federal Register a separate document that details delegations of authority to decide petitions and supplemental petitions submitted pursuant to Part 171 and Part 172 of the Customs Regulations.

Regulatory Flexibility Act

Inasmuch as small business entities are infrequently repeat violators of Customs laws, and, therefore, will seldom need to avail themselves of the these regulatory provisions and file petitions for relief on a regular basis, it is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" under E.O. 12866.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 12

Bonds, Customs duties and inspection, Labeling, Marking, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizure and forfeiture, Trade agreements.

19 CFR Part 18

Bonds, Customs duties and inspection, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Financial and accounting procedures, Harbors, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 111

Administrative practice and procedure, Bonds, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 114

Carnets, Customs duties and inspection.

19 CFR Part 125

Bonds, Customs duties and inspection, Freight, Reporting and recordkeeping requirements.

19 CFR Part 134

Country of origin, Customs duties and inspection, Imports, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Reporting and recordkeeping requirements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Seizures and forfeitures.

19 CFR Part 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Seizures and forfeitures.

19 CFR Part 172

Administrative practice and procedure, Customs duties and inspection, Penalties.

AMENDMENTS TO THE REGULATIONS

For the reasons stated above, parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172, Customs Regulations (19 CFR parts 10, 12,

18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10, Customs Regulations (19 CFR Part 10) continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * * * *

2. Section 10.39 is amended by removing paragraph (f) and redesignating current paragraph (g) and (h), respectively, as paragraphs (f) and (g) and by revising the introductory paragraph of § 10.39(e) to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * * * *

(e) If there has been a default with respect to any or all of the articles covered by the bond and a written petition for relief is filed as provided in Part 172 of this chapter, it will be reviewed by the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the entry was filed. If the Fines, Penalties, and Forfeitures Officer is satisfied that the importation was properly entered under Chapter 98, subchapter XIII, and that there was no intent to defraud the revenue or delay the payment of duty, the Fines, Penalties, and Forfeitures Officer may cancel the liability for the payment of liquidated damages in any case in his or her delegated authority as follows:

* * * * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation and relevant specific authority citations for Part 12, Customs Regulations (19 CFR Part 12) continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * * * *

Sections 12.95 through 12.103 also issued under 15 U.S.C. 1241–1245;

* * * * * * *

2. Section 12.8(b) is amended by removing the number "$100,000" and by replacing it with the phrase "the Fines, Penalties, and Forfeitures Officer's delegated authority".

3. Section 12.102 is amended by removing the number "60" and adding in its place the number "30".

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for Part 18, Customs Regulations (19 CFR Part 18) is revised to read as follows and the specific authority for § 18.8 is removed:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624.

* * * * * * *

2. Section 18.8(d) is revised to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

* * * * * * *

(d) In any case in which liquidated damages are imposed in accordance with this section and the Fines, Penalties, and Forfeitures Officer is satisfied by evidence submitted to him with a petition for relief filed in accordance with the provisions of Part 172 of this chapter that any violation of the terms and conditions of the bond occurred without any intent to evade any law or regulation, the Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel such claim upon the payment of any lesser amount or without the payment of any amount as may be deemed appropriate under the law and in view of the circumstances.

* * * * * * *

3. Section 18.24 is amended by removing footnote 9.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24, Customs Regulations (19 CFR Part 24) continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701;

* * * * * * *

2. The first sentence of § 24.24(h)(3) is amended by removing the phrase "published pursuant to the provisions of § 172.22(d)(1) of this chapter".

PART 111—CUSTOMS BROKERS

1. The general authority citation for Part 111, Customs Regulations (19 CFR Part 111) continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * * * *

2. Section 111.92 is revised to read as follows:

§ 111.92 Notice of monetary penalty.

(a) *Pre-penalty notice.* If assessment of a monetary penalty under § 111.91 is contemplated, Customs will issue a written notice which advises the broker or other person of the allegations or complaints against him and explains that the broker or other person has a right to respond to the allegations or complaints in writing within 30 days of the date of mailing of the notice. The Fines, Penalties, and Forfeitures Officer has discretion to provide additional time for good cause.

(b) *Penalty notice.* If the broker or other person files a timely response to the written notice of the allegations or complaints, the Fines, Penalties, and Forfeiture Officer will review this response and will either cancel the case, issue an notice of penalty in an amount which is lower than that provided for in the written notice of allegations or complaints or issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints. If no response is received from the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints.

3. Section 111.93 is amended by removing the reference to A111.92" and adding in its place, "111.92(b)".

PART 113—CUSTOMS BONDS

1. The general authority citation and relevant specific authority citation for Part 113, Customs Regulations (19 CFR Part 113) continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. Section 113.46 is removed.

3. Section 113.52 is amended by removing the words "and 172.22(c)" from the parenthetical phrase contained therein.

4. Section 113.54(a) is amended by removing "172.31" and adding in its place "172.11(b)".

PART 114—CARNETS

1. The general authority citation for Part 114, Customs Regulations (19 CFR Part 114) continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. Section 114.34(c) is amended by removing the final non-parenthetical sentence and the final parenthetical sentence.

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. The general authority citation and relevant specific authority citation for Part 125, Customs Regulations (19 CFR Part 125) continue to read as follows:

Authority: 19 U.S.C. 66, 1565, 1624.

* * * * * * *

Sections 125.41 and 125.42 also issued under 19 U.S.C. 1623.

2. Section 125.42 is revised to read as follows:

§ 125.42 Cancellation of liability.

The Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel liquidated damages incurred under the bond of the foreign trade zone operator, containing the bond conditions set forth in § 113.73 of this chapter, or under the bond of the cartman, lighterman, bonded carrier, bonded warehouse operator, container station operator or centralized examination station operator on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, upon the payment of such lesser amount, or without the payment of any amount, as the Fines, Penalties, and Forfeitures Officer may deem appropriate under the circumstances. Application for cancellation of liquidated damages incurred shall be made in accordance with the provisions of Part 172 of this chapter.

PART 134—COUNTRY OF ORIGIN MARKING

1. The general authority citation for Part 134, Customs Regulations (19 CFR Part 134) continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. Section 134.54 is amended by removing in paragraph (a) the phrase ", plus any estimated duty thereon as determined at the time of entry"; and by removing the second sentence in paragraph (b).

PART 145—MAIL IMPORTATIONS

1. The general authority citation and relevant specific authority citation for Part 145, Customs Regulations (19 CFR Part 145) continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618;

* * * * * * *

2. Section 145.4(b) is revised to read as follows:

§ 145.4 Dutiable merchandise without declaration or invoice, prohibited merchandise, and merchandise imported contrary to law.

* * * * * * *

(b) *Mitigation of forfeiture.* Any claimant incurring a forfeiture of merchandise for violation of this section may file a petition for relief

pursuant to Part 171 of this chapter. Mitigation of that forfeiture may occur consistent with mitigation guidelines.

* * * * * * *

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation and relevant specific authority citation for Part 162, Customs Regulations (19 CFR Part 162) continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * * * *

Section 162.48 also issued under 19 U.S.C. 1606, 1607, 1608, 1612, 1613b, 1618;

* * * * * * *

2. Section 162.48 is amended by revising the section heading and the heading of paragraph (b) to read as follows and by removing from the first sentence in paragraph (b) the phrase "and such value is less than $1,000,":

§ 162.48 Disposition of perishable and other seized property.

* * * * * * *

(b) *Disposition of other seized property.*

* * * * * * *

3. The fourth sentence of § 162.74(c) is amended by removing the word "demanded" and replacing it with the word "determined".

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The general authority citation for Part 171, Customs Regulations (19 CFR Part 171) is revised to read as follows:

Authority: 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321; 46 U.S.C. App. 320.

* * * * * * *

2. Section 171.0 is revised to read as follows:

§ 171.0 Scope.

This part contains provisions relating to petitions for relief from fines, forfeitures, and certain penalties incurred, and petitions for the restoration of proceeds from sale of seized and forfeited property. This part does not relate to petitions on claims for liquidated damages or penalties which are guaranteed by the conditions of the International Carrier Bond (*see* § 113.64 of this Chapter).

3. Subparts A through E of Part 171 are revised to read as follows:

SUBPART A—APPLICATION FOR RELIEF

Sec.
171.1 Petition for relief.
171.2 Filing a petition.
171.3 Oral presentations seeking relief.

SUBPART B—ACTION ON PETITIONS

171.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.
171.12 Petitions acted on at Customs Headquarters.
171.13 Limitations on consideration of petitions.
171.14 Headquarters advice.

SUBPART C—DISPOSITION OF PETITIONS

171.21 Written decisions.
171.22 Decisions effective for limited time.
171.23 Decisions not protestable.

SUBPART D—OFFERS IN COMPROMISE

171.31 Form of offers.
171.32 Acceptance of offers in compromise.

SUBPART E—RESTORATION OF PROCEEDS OF SALE

171.41 Application of provisions for petitions for relief.
171.42 Time limit for filing petition for restoration.
171.43 Evidence required.
171.44 Forfeited property authorized for official use.

SUBPART A—APPLICATION FOR RELIEF

§ 171.1 Petition for relief.

(a) *To whom addressed.* Petitions for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs must be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* For commercial violations, the petition for remission or mitigation must be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a responsible employee representative of the corporation. Electronic signatures are acceptable. In non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition may enlist a family member or other representative to file a petition on his behalf. The deciding Customs officer may, in his or her discretion, require proof of representation before consideration of any petition.

(c) *Form.* The petition for remission or mitigation need not be in any particular form. Customs can require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. The petition must set forth the following:

(1) A description of the property involved (if a seizure);

(2) The date and place of the violation or seizure;

(3) The facts and circumstances relied upon by the petitioner to justify remission or mitigation; and

(4) If a seizure case, proof of a petitionable interest in the seized property.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 171.2 Filing a petition.

(a) *Where filed.* A petition for relief must be filed with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed.*

(1) *Seizures.* Petitions for relief from seizures must be filed within 30 days from the date of mailing of the notice of seizure.

(2) *Penalties.* Petitions for relief from penalties must be filed within 60 days of the mailing of the notice of penalty incurred.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition must be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty is assessed or a seizure is made and less than 180 days remain before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the seizure or penalty notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter will be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

§ 171.3 Oral presentations seeking relief.

(a) *For violation of section 592 or section 593A.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or section 593A, Tariff Act of 1930, as added (19 U.S.C. 1593a), the person named in the notice, in addition to filing a petition, may make an oral presentation seeking relief in accordance with this paragraph.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discretion of any official of the Customs Service or Department of the Treasury authorized to act on a petition or supplemental petition.

SUBPART B—ACTION ON PETITIONS

§ 171.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Remission or mitigation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), or section 5321(c) of title 31,

United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any claim when he or she definitely determines that the act or omission forming the basis of any claim of penalty or forfeiture did not occur.

(c) *When violation is result of vessel in distress.* The Fines, Penalties, and Forfeitures Officer may remit without payment any penalty which arises for violation of the coastwise laws if he or she is satisfied that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

§ 171.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and forfeitures which are outside of his or her delegated authority, the Fines, Penalties, and Forfeitures Officer will refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate, unless there has been no delegation to act by the Secretary of the Treasury or his designee. In those cases where there has been no delegation to act by the Secretary, the Chief, Penalties Branch, will forward the matter to the Department with a recommendation.

§ 171.13 Limitations on consideration of petitions.

(a) *Cases referred for institution of legal proceedings.* No action will be taken on any petition after the case has been referred to the Department of Justice for institution of legal proceedings. The petition will be forwarded to the Department of Justice.

(b) *Conveyance awarded for official use.* No petition for remission of forfeiture of a seized conveyance which has been forfeited and retained for official use will be considered unless it is filed before final disposition of the property is made. This does not affect petitions for restoration of proceeds of sale filed pursuant to the provisions of section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613).

§ 171.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case (except as provided in this section), without regard to delegated authority to act on a petition or offer, when a novel or complex

issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to seizures and forfeitures, penalties, or mitigating or remitting any claim. This section does not apply to actual duty loss tenders determined by Customs pursuant to § 162.74(c) of this Chapter relating to prior disclosure and to actual duty loss demands made under § 162.79b of this Chapter. The request for advice may be initiated by the alleged violator or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in any case.

SUBPART C—DISPOSITION OF PETITIONS

§ 171.21 Written decisions.

If a petition for relief relates to a violation of sections 592, 593A or 641, Tariff Act of 1930, as amended (19 U.S.C. 1592, 19 U.S.C. 1593a, or 19 U.S.C. 1641), the petitioner will be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based.

§ 171.22 Decisions effective for limited time.

A decision to mitigate a penalty or to remit a forfeiture upon condition that a stated amount is paid will be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount or arrangements for such payment are not made, or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for forfeiture will be deemed applicable and will be enforced by promptly referring the matter, after required collection action, if appropriate, to the appropriate Office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs.

§ 171.23 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit a forfeiture or mitigate a penalty is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit a forfeiture or mitigate a penalty is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated amount as accord and satisfaction.* Payment of a mitigated amount in compliance with an administrative decision on a petition or supplemental petition for relief will be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated amount will never serve as a bar to filing a supplemental petition for relief.

SUBPART D—OFFERS IN COMPROMISE

§ 171.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617) must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this Chapter.

§ 171.32 Acceptance of offers in compromise.

An offer in compromise will be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

SUBPART E—RESTORATION OF PROCEEDS OF SALE

§ 171.41 Application of provisions for petitions for relief.

The general provisions of subpart A of this part on filing and content of petitions for relief apply to petitions for restoration of proceeds of sale except insofar as modified by this subpart.

§ 171.42 Time limit for filing petition for restoration.

A petition for the restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) must be filed within 3 months after the date of the sale.

§ 171.43 Evidence required.

In addition to such other evidence as may be required under the provisions of subpart A of this part, the petition for restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), must show the interest of the petitioner in the property. The petition must be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him from knowing of it.

§ 171.44 Forfeited property authorized for official use.

If forfeited property which is the subject of a claim under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) has been authorized for official use, retention or delivery will be regarded as the sale thereof for the purposes of section 613. The appropriation available to the receiving agency for the purchase, hire, operation, maintenance and repair of property of the kind so received is available for the granting of relief to the claimant and for the satisfaction of liens for freight, charges and contributions in general average that may have been filed.

4. Subpart G is added to Part 171 to read as follows:

SUBPART G—SUPPLEMENTAL PETITIONS FOR RELIEF

Sec.

171.61 Time and place of filing.
171.62 Supplemental petition decision authority.
171.63 Appeals to the Secretary of the Treasury in certain 1592 cases.
171.64 Waiver of statute of limitations.

SUBPART G—SUPPLEMENTAL PETITIONS FOR RELIEF

§ 171.61 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition must be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to the entries involved in a penalty case which reduces the loss of duties upon which the mitigated penalty amount was based (whichever is later) unless another time to file such a supplemental petition is prescribed in the decision. The filing of a supplemental petition may be subject to the conditions prescribed in § 171.64 of this part. A supplemental petition may be filed whether or not the mitigated penalty or forfeiture remission amount designated in the decision on the original petition is paid.

§ 171.62 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officers*. Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer, will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating that additional relief to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to a designated Headquarters official assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641 where the amount of the penalty assessed exceeds $10,000 will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings.

(b) *Decisions of Customs Headquarters*. Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, will be forwarded to the Director, International Trade Compliance Division, Customs Headquarters, for review and decision.

(c) *Decisions of Treasury Department*. Supplemental petitions filed on cases where the original decision was made in the Treasury Department, will be referred to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who will forward the supplemental petitions to the Department with a recommendation.

(d) *Authority of Assistant Commissioner*. Any authority given to any Headquarters official by this part may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

§ 171.63 Appeals to the Secretary of the Treasury in certain 1592 cases.

A petitioner filing a supplemental petition pursuant to this subpart from a decision of the Chief, Penalties Branch, Office of Regulations and Rulings, with respect to any liability assessed under 19 U.S.C. 1592 may request that the petition be accepted as an appeal to the Secretary of the Treasury. The Secretary will accept for decision any such supplemental petition when in his discretion he determines that such petition raises a question of fact, law or policy of such importance as to require a decision by the Secretary. If the Secretary declines to accept an appeal for decision, the petitioner will be so informed. In such a case, a decision will be issued thereon by the Director, International Trade Compliance Division.

§ 171.64 Waiver of statute of limitations.

The deciding Customs official always reserves the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a supplemental petition in any case in which less than one year remains before the statute will be available as a defense to all or part of that case.

5. Appendix C to Part 171 is amended by removing the NOTE following section I.D., removing section I.E., redesignating section I.F. as section I.E., removing section I.G. and redesignating section I.H. as section I.F.

1. Part 172 is revised to read as follows:

PART 172—CLAIMS FOR LIQUIDATED DAMAGES; PENALTIES SECURED BY BONDS

Sec.

172.0 Scope.

SUBPART A--NOTICE OF CLAIM AND APPLICATION FOR RELIEF

172.1 Notice of liquidated damages or penalty incurred and right to petition for relief.
172.2 Petition for relief.
172.3 Filing a petition.
172.4 Demand on surety.

SUBPART B—ACTION ON PETITIONS

172.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.
172.12 Petitions acted at Customs Headquarters.
172.13 Limitations on consideration of petitions.
172.14 Headquarters advice.

SUBPART C—DISPOSITION OF PETITIONS

172.21 Decisions effective for limited time.
172.22 Decisions not protestable.

SUBPART D—OFFERS IN COMPROMISE

172.31 Form of offers.
172.32 Authority to accept offers.
172.33 Acceptance of offers in compromise.

SUBPART E—SUPPLEMENTAL PETITIONS FOR RELIEF

172.41 Time and place of filing.
172.42 Supplemental petition decision authority.
172.43 Waiver of statute of limitations.

Authority: 19 U.S.C. 66, 1618, 1623, 1624; 46 U.S.C. App. 320.

§ 172.0 Scope.

This part contains provisions relating to petitions for relief from claims for liquidated damages arising under any Customs bond and penalties incurred which are secured by the conditions of the International Carrier Bond (*see* § 113.64 of this Chapter). This part does not relate to petitions on unsecured fines or penalties or seizures and forfeitures, nor does it relate to petitions for the restoration of proceeds of sale pursuant to 19 U.S.C. 1613.

SUBPART A—NOTICE OF CLAIM AND APPLICATION FOR RELIEF

§ 172.1 Notice of liquidated damages or penalty incurred and right to petition for relief.

(a) *Notice of liquidated damages or penalty incurred.* When there is a failure to meet the conditions of any bond posted with Customs or when a violation occurs which results in assessment of a penalty which is secured by a Customs bond, the principal will be notified in writing of any liability for liquidated damages or penalty incurred and a demand will be made for payment. The sureties on such bond will also be notified in writing of any such liability at the same time.

(b) *Notice of right to petition for relief.* The notice will inform the principal that application may be made for relief from payment of liquidated damages or penalty.

§ 172.2 Petition for relief.

(a) *To whom addressed.* Petitions for the cancellation of any claim for liquidated damages or remission or mitigation of a fine or penalty secured by a Customs bond incurred under any law or regulation administered by Customs must be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* The petition for remission or mitigation must be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or responsible employee representative of the corporation. Electronic signatures are acceptable. The deciding Customs officer may, in his or her discretion and with articulable cause, require proof of representation before consideration of any petition.

(c) *Form.* The petition for cancellation, remission or mitigation need not be in any particular form. Customs can require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. The petition must set forth the following:

(1) The date and place of the violation; and

(2) The facts and circumstances relied upon by the petitioner to justify cancellation, remission or mitigation.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 172.3 Filing a petition.

(a) *Where filed.* A petition for relief must be filed by the bond principal with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed.* Petitions for relief must be filed within 60 days from the date of mailing to the bond principal the notice of claim for liquidated damages or penalty secured by a bond.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition must be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty or claim for liquidated damages is assessed and fewer than 180 days remain from the date of penalty or liquidated damages notice before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter will be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

§ 172.4 Demand on surety.

If the principal fails to file a petition for relief or fails to comply in the prescribed time with a decision to mitigate a penalty or cancel a claim for liquidated damages issued with regard to a petition for relief, Customs will make a demand for payment on surety. The surety will then have 60 days from the date of the demand to file a petition for relief.

SUBPART B—ACTION ON PETITIONS

§ 172.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Mitigation or cancellation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer, notwithstanding any other law or regulation, is empowered to mitigate any penalty or cancel any claim for liquidated damages on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any case without payment of a mitigated or cancellation amount when he or she definitely determines that the act or omission forming the basis of any claim of penalty or claim for liquidated damages did not occur.

§ 172.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and claims for liquidated damages which are outside of his or her delegated authority the Fines, Penalties, and Forfeitures Officer will refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered, notwithstanding any other law or regulation, to mitigate penalties or cancel bond claims on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate.

§ 172.13 Limitations on consideration of petitions.

(a) *Cases referred for institution of legal proceedings.* No action will be taken on any petition if the civil liability has been referred to the Department of Justice for institution of legal proceedings. The petition will be forwarded to the Department of Justice.

(b) *Delinquent sureties.* No action will be taken on any petition from a principal or surety if received after the issuance to surety of a notice to show cause pursuant to the provisions of § 113.38(c)(3) of this Chapter.

§ 172.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case (except as provided in this section), without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to penalties secured by bonds (including penalty-based determinations of duty except as provided in this section), claims for liquidated damages or mitigating any claim. This section does not apply to actual duty loss tenders determined by Customs pursuant to § 162.74(c) of this chapter relating to prior disclosure. The request for advice may be initiated by the bond principal, surety or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in any case.

SUBPART C—DISPOSITION OF PETITIONS

§ 172.21 Decisions effective for limited time.

A decision to mitigate a penalty or to cancel a claim for liquidated damages upon condition that a stated amount is paid will be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount is not made or a petition or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for liquidated damages will be deemed applicable and will be enforced by promptly transmitting the matter, after required collection action, if appropriate, to the appropriate office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs. Any such case may also be the basis for a sanction action commenced in accordance with regulations in this Chapter.

§ 172.22 Decisions not protestable.

(a) *Mitigation decision not subject to protest*. Any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated or cancellation amount as accord and satisfaction*. Payment of a mitigated or cancellation amount in compliance with an administrative decision on a petition or supplemental petition for relief will be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated or cancellation amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated or cancellation amount will never serve as a bar to filing a supplemental petition for relief.

SUBPART D—OFFERS IN COMPROMISE

§ 172.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617), must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this Chapter.

§ 172.32 Authority to accept offers.

The authority to accept offers in compromise, subject to the recommendation of the General Counsel of the Treasury or his delegee, resides with the official having authority to decide a petition for relief, except that authority to accept offers in compromise submitted with regard to penalties secured by a bond or claims for liquidated damages

which are the subject of a letter to show cause issued to a surety in anticipation of possible action involving nonacceptance of bonds authorized under the provisions of Part 113 of this chapter will reside with the designated Headquarters official who issued the show cause letter.

§ 172.33 Acceptance of offers in compromise.

An offer in compromise will be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

SUBPART E—SUPPLEMENTAL PETITIONS FOR RELIEF

§ 172.41 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. The petitioner must file such a supplemental petition within 60 days from the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to issues serving as the basis for the claim for liquidated damages (whichever is later) unless another time to file such a supplemental petition is prescribed in the decision. A supplemental petition may be filed whether or not the mitigated amount designated in the decision on the original petition is paid.

§ 172.42 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officers.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer, will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating additional relief to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to a designated Headquarters official assigned to a field location for review and decision.

(b) *Decisions of Customs Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, will be forwarded to the Director, International Trade Compliance Division, for review and decision.

(c) *Authority of Assistant Commissioner.* Any authority given to any Headquarters official by this part may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

§ 172.43 Waiver of statute of limitations.

The deciding Customs official always reserves the right to require a waiver of the statute of limitations executed by the charged party or

parties as a condition precedent before accepting a supplemental petition in any case in which less than one year remains before the statute will be available as a defense to all or part of that case.

RAYMOND W. KELLY,
Commissioner of Customs.

Approved: July 25, 2000.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, September 5, 2000 (65 FR 53565)]

(T.D. 00–58)

DELEGATIONS OF AUTHORITY TO DECIDE PETITIONS FOR RELIEF

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the delegations of authority to decide petitions and supplemental petitions submitted pursuant to Parts 171 or 172 of the Customs Regulations granted to Fines, Penalties, and Forfeitures Officers; Headquarters officials in field locations; the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters; the Director, International Trade Compliance Division, Customs Headquarters; and the Assistant Commissioner, Office of Regulations and Rulings, Customs Headquarters, with regard to petitions and supplemental petitions for relief submitted concerning claims for liquidated damages, seizures and penalties incurred under laws administered by Customs. The document also identifies those cases where the Secretary of the Treasury has retained all administrative authority to decide petitions and supplemental petitions for relief.

EFFECTIVE DATE: October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202) 927–2344.

SUPPLEMENTARY INFORMATION:

Notwithstanding any other delegations of authority that have been previously published, the following are delegations of authority granted to the enumerated Customs officers to decide petitions and supplemental petitions for relief under authority granted to the Secretary of the Treasury by sections 618 and 623 of the Tariff Act of 1930, as

amended (19 U.S.C. 1618 and 1623), and section 320 of title 46, United States Code App. (46 U.S.C. App. 320), and section 5321 of title 31, United States Code (31 U.S.C. 5321).

I. *Original Petitions for Relief*

A. *Fines, Penalties, and Forfeitures Officers*. Fines, Penalties, and Forfeitures Officers are hereby delegated authority to decide original petitions as follows:

(1) *Liquidated damages*. All claims for liquidated damages arising from breach of the basic importation bond for failing to file or late filing of entry summaries or failing to pay or late payment of estimated duties. Any other claim for liquidated damages for breach of any Customs bond when the amount of the claim does not exceed $200,000.

(2) *19 U.S.C. 1592, 19 U.S.C. 1593a*. Any fines, penalties, or forfeitures incurred under the provisions of section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), or section 593A of the Tariff Act of 1930, as amended (19 U.S.C. 1593a), when the total amount of those fines, penalties, or forfeitures does not exceed $50,000.

(3) *19 U.S.C. 1436, 1453, 1595a(b) and 1641*. All fines, penalties, or forfeitures incurred under the provisions of sections 436, 453 or 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1436, 19 U.S.C. 1453 and 19 U.S.C. 1641, respectively) and any penalties incurred under the provisions of section 596 of the Tariff Act of 1930, as amended (19 U.S.C. 1595a(b)) for delivering merchandise from the place of unlading without Customs authorization or without appropriate examination in violation of the provisions of section 448 or 499 of the Tariff Act of 1930, as amended (19 U.S.C. 1448 or 19 U.S.C. 1499, respectively) when the amount of the claim does not exceed $200,000.

(4) *Other laws administered by Customs*. Except as noted in subparagraphs (A)(1), (A)(2) or (A)(3), and except where the Secretary of the Treasury retains jurisdiction: any fines, penalties, or forfeitures or claims for liquidated damages incurred under any other law administered by Customs when the total amount of the fines, penalties, and forfeitures incurred with respect to any one offense does not exceed $100,000.

B. *Chief, Penalties Branch, Office of Regulations and Rulings*. The Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, is delegated authority to decide all petitions for relief submitted with regard to cases which are neither enumerated as remaining under the original jurisdiction of the Secretary of the Treasury nor have been delegated to the Fines, Penalties, and Forfeitures Officers.

C. *Assistant Commissioner, Office of Regulations and Rulings*. Notwithstanding any other delegation of authority, the Assistant Commissioner, Office of Regulations and Rulings, Customs Headquarters, or his delegate, has authority to remit or mitigate any penalties assessed against super carriers for failure to manifest narcotic drugs pursuant to 19 U.S.C. 1584(a)(2).

D. *Secretary of the Treasury.* The Secretary of the Treasury, or his delegate retains jurisdiction over original petitions for relief filed with regard to the following cases:

(1) *Certain civil monetary penalties.* All jurisdiction over the remission or mitigation of monetary penalties imposed for violation of the provisions of 31 U.S.C. 5321.

(2) *Certain monetary instrument seizures.* Seizures, subject to forfeiture under the provisions of title 31, United States Code, section 5317, of monetary instruments for violation of the provisions of title 31, United States Code, section 5316, when the value of the monetary instruments exceeds $500,000.

(3) *Export control.* Seizures of merchandise subject to forfeiture under the provisions of title 22, United States Code, section 401, when the value of the merchandise exceeds $500,000.

(4) *Failure to declare merchandise.* All fines, penalties, and forfeitures arising from failure to declare merchandise in violation of the provisions of title 19, United States Code, section 1497, when total liability exceeds $250,000.

(5) *Conveyance seizures.* Seizures of conveyances for violations other than those involving importation or transportation of controlled substances when the value of the conveyance exceeds $500,000.

(6) *Property seized under 18 U.S.C. 981 relating to violations of 18 U.S.C. 1956 or 1957.* Seizures of property under 18 U.S.C. 981 relating to violations of 18 U.S.C. 1956 or 1957 when the value of that property exceeds $500,000.

II. *Supplemental petitions for relief.*

A. *Decisions of Fines, Penalties, and Forfeitures Officers.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating additional relief to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to a designated Headquarters official assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641 where the amount of the penalty assessed exceeds $10,000 will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters.

B. *Decisions of the Chief, Penalties Branch, Office of Regulations and Rulings.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, and the Chief, Penalties Branch, believes that no further relief is warranted will be forwarded to the Director, International Trade Compliance Division, Customs Headquarters, for review and decision.

C. *Decisions of the Assistant Commissioner, Office of Regulations and Rulings*. Supplemental petitions filed on cases where the original decision was made by the Assistant Commissioner, Office of Regulations and Rulings, Customs Headquarters, or his delegate, will be retained by the Assistant Commissioner, Office of Regulations and Rulings, for review and decision, and will not be delegated.

D. *Decisions of Treasury Department*. Supplemental petitions filed on cases where the original decision was made in the Treasury Department will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, where decisions on the supplemental petitions will be prepared for the Treasury Department for review and approval.

III. *Authority of the Assistant Commissioner, Office of Regulations and Rulings.*

All authority delegated to Headquarters personnel set forth in this document is also vested in the Assistant Commissioner, Office of Regulations and Rulings, Customs Headquarters.

RAYMOND W. KELLY,
Commissioner of Customs.

Approved: July 25, 2000.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, September 5, 2000 (65 FR 53804)]

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, August 30, 2000.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF THE CHEMICAL COMPOUND 3-NITROBENZALDHYDE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter and treatment relating to the classification of the chemical compound 3-Nitrobenzaldhyde.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling concerning the tariff classification of the chemical compound 3-Nitrobenzaldhyde, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before October 13, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulation and Rulings,

Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 927–2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of 3-Nitrobenzaldhyde. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) D81515, dated October 20, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be

the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY D81515, Customs ruled that 3-Nitrobenzaldhyde was classified in subheading 2912.29.60, HTSUS, as Aldehydes, whether or not with other oxygen function; cyclic polymers of aldehydes; paraformaldehyde: Cyclic aldehydes without other oxygen function: Other: Other. NY D81515 is set forth as Attachment "A" to this document. In New York Ruling Letter (NY) C83891, issued on February 13, 1998, Customs ruled that 3-Nitrobenzaldhyde was classified in subheading 2913.00.40, HTSUS, as a Halogenated, sulfonated, nitrated or nitrosated derivatives of products of heading 2912: Aromatic: Other. (*see* Attachment "B" to this document). These rulings are in conflict with one another.

It is now Customs position that this substance was not correctly classified in heading 2912, HTSUS, in NY D81515. By operation of GRI(3)(a), classifying the substance in the more specific heading, 3-Nitrobenzaldhyde is correctly classified in subheading 2913.00.40, HTSUS, as a Halogenated, sulfonated, nitrated or nitrosated derivatives of products of heading 2912: Aromatic: Other.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY D81515 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 963169. (*see* Attachment "C" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 29, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, October 20, 1998.

CLA–2–29:RR:NC:2:240 D81515
Category: Classification
Tariff No. 2912.29.6000,
2921.49.4500, and 2930.90.2900

MS. JOAN VON DOEHREN
INTERCHEM CORPORATION
120 Route 17 North
P.O. Box 1579
Paramus, NJ 07653–1579

Re: The tariff classification of **3-Nitrobeuzaldehyde** (CAS *if* 99–61–6) and **2-Bromothioanisole** (CAS if 19614–16–5) from China, **4,6-Dichloro-2-methylbeuzylamine** (CAS *if* 1505 17–76–3) from Czech Republic.

DEAR MS. VON DOEHREN:

In your letter dated August 19, 1998, you requested a tariff classification ruling.

The applicable subheading for 3-Nitrobenzaldehyde will be 2912.29.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for Aldehydes, whether or not with other oxygen function; cyclic polymers of aldehydes; paraformaldehyde: Cyclic aldehydes without other oxygen function: Other: Other * * *. The rate of duty will be 9 percent ad valorem.

The applicable subheading for 4,6-Dichloro-2-methylbenzylamine will be 2921.49.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for Amine-function compounds: Aromatic monoamines and their derivatives; salts thereof: Other: Other: Other: Other * * *. The rate of duty will be 1.4 cents per kilogram plus 13.9 percent ad valorem.

The applicable subheading for 2-Bromothioanisole, also known as 1-Bromo-2-methylthiobenzene, will be 2930.90.2900, Harmonized Tariff Schedule of the United States (HTS), which provides for Organo-sulfur compounds: Other: Aromatic: Other: Other * * *. The rate of duty will be *6.5* percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 212–466–5768.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 13, 1998.

CLA–2–29:RR:NC:2:240 C83891
Category: Classification
Tariff No. 2913.00.4000

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 Barclay Boulevard
Buffalo Grove, IL 60089–4537

Re: The tariff classification of 3-Nitrobenzaldehyde (CAS #99–61–6) from China.

DEAR MR. CHIVINI:

In your letter dated January 19, 1998, you requested a tariff classification ruling.

The applicable subheading for 3-Nitrobenzaldehyde will be 2913.00.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for halogenated, sulfonated, nitrated or nitrosated derivatives of products of heading 2912: aromatic: other. The rate of duty will be 14.2 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 212–466–5768.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963169 AM
Category: Classification
Tariff No. 2913.00.40

MS. JOAN VON DOEHREN
INTERCHEM CORPORATION
120 Route 17 North
P.O. Box 1579
Paramus, NJ 07653–1579

Re: NY D81515 modified; 3-Nitrobenzaldehyde.

DEAR MS. VON DOEHREN:

This is in reference to a New York Ruling Letter (NY) D81515 issued to you on October 20, 1998, by the Director, Customs National Commodity Specialist Division, concerning the classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of 3-Nitrobenzaldehyde.

We have also reviewed the decision in New York Ruling Letter (NY) C83891, issued on February 13, 1998, by the Director, Customs National Commodity Specialist Division, concerning the classification of 3-Nitrobenzaldehyde. The classifications of 3-Nitrobenzaldehyde in these two rulings are in conflict and we have determined that the classification set forth in NY D81515 for that compound is in error. This ruling modifies NY D81515 with respect to the classification of 3-Nitrobenzaldehyde.

Facts:

The substance 3-Nitrobenzaldehyde, has the chemical name $C_7H_5NO_3$, and the CAS registry #99–61–6. It is imported as a yellowish powder and used in the synthesis of dyes, surface active agents, and, as in the instant case, in pharmaceutical intermediates. *Hawley's Condensed Chemical Dictionary*, Eleventh Edition, 1999.

Issue:

Whether 3-Nitrobenzaldehyde is classified in heading 2912, HTSUS, as a cyclic aldehyde without oxygen function, or in heading 2913, HTSUS, as a nitrated derivative of an aldehyde.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 3 requires that when goods are *prima facie* classifiable under two or more headings, the most specific description is preferred, and if neither is more specific, that heading which occurs last in numerical order is used. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. *See*, T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following headings are relevant to the classification of this product:

2912	Aldehydes, whether or not with other oxygen function; cyclic polymers of aldehydes; paraformaldehyde:
	Acyclic aldehydes without other oxygen function:
2912.29	Other [than Benzaldehyde]:
2912.29.60	Other [than Phenylacetaldehyde or 3,4Dimethylbenzaldehyde; and p-Tolualdehyde]
* * * * * * *	
2913.00	Halogenated, sulfonated, nitrated or nitrosated derivatives of products of heading 2912:
	Aromatic:
2913.00.40	Other [than 4-Fluoro-3-phenoxybenzaldehyde]

In NY D81515 this merchandise was classified in subheading 2912.29.60, HTSUS, because it is a cyclic aldehyde without oxygen function. However, 3-Nitrobenzaldehyde is also a nitrated derivative of an aldehyde. EN 29.12 lists Benzaldehyde as an aromatic aldehyde and explains that it is a "[H]ighly refractive, colourless liquid with a characteristic odour of bitter almonds; used in organic synthesis, in medicine, etc." with the chemical formula $C_6H_5.CHO$. EN 29.13 explains that Halogenated, sulfonated, nitrated or nitrosated derivatives of products of heading 2912:

> [These] are derived from aldehydes by replacing one or more of the hydrogen atoms (other than a hydrogen in the aldehyde group) (-CHO) by one or more halogens, sulpho groups ($-SO_3H$), nitro groups ($-NO_2$) or nitroso groups (-NO) or by any combination thereof. The most important is **chloral** (trichloroacetaldehyde) ($CCl_3.CHO$); anhydrous, mobile, colourless liquid with a penetrating odour; a hypnotic.
>
> This heading **excludes** chloral hydrate ($CCl_3.CH(OH)_2$) (2,2,2-trichloroethane-1,1-diol) which falls in **heading 29.05**.
>
> This heading also **excludes** aldehyde-bisulphite compounds which are classified as sulphonated derivatives of alcohols (**headings 29.05 to 29.11**).

3-Nitrobenzaldehyde is described specifically in subheading 2913.00.40 as an aromatic aldehyde which has been derived by the addition of a nitro functional group. Benzaldehyde, C_7H_6O, becomes 3-Nitrobenzaldehyde, $C_7H_5NO_3$, by the replacement of the hydrogen

atom bonded to the #3 carbon on the benzene ring with a nitro (NO_2) functional group. Furthermore, 3-Nitrobenzaldehyde is not specifically excluded from heading 2913, HTSUS.

By operation of GRI 3(a), the heading which provides the more specific description is preferred. Heading 2913, HTSUS, more specifically describes the substance as a nitrated derivative of an aldehyde. Therefore, 3-Nitrobenzaldehyde was correctly classified in NY C83891 under subheading 2913.00.40, HTSUS, as a nitrated derivative of an aldehyde.

Holding:

3-Nitrobenzaldehyde is classified in subheading 2913.00.40, HTSUS, as a nitrated derivative of an aldehyde.

Effect on Other Rulings:

NY D81515 is modified with respect to the classification of 3-Nitrobenzaldehyde as described in this ruling letter.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF ACOUSTICAL EYE LAG SCREWS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification and revocation of ruling letters and revocation of treatment relating to tariff classification of acoustical eye lag screws.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify one ruling and revoke two other rulings relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of acoustical eye lag screws, and to revoke any treatment Customs has previously accorded to substantially identical transactions. These are threaded fasteners used to suspend acoustical or drop ceilings. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before October 13, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify one ruling and revoke two other rulings relating to the tariff classification of acoustical eye lag screws. Although in this notice Customs is specifically referring to three rulings, *NY* 834307, *NY* D80181, and *DD* 877436, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one/ones identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may

raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In *NY* 834307, dated January 12, 1989, *DD* 877436, dated September 4, 1992, and *NY* D80181, dated July 20, 1998, articles identified variously as lag screws, flat eye lag screws, and steel flat eye lag screws, were held to be classifiable in subheading 7318.12.00, HTSUS, as other wood screws. These rulings were based on the fact that these fasteners possessed at least some design characteristics common to wood screws. These rulings are set forth as "Attachment A," "Attachment B," and "Attachment C," to this document, respectively.

It is now Customs position that these fasteners are classifiable in subheading 7318.19.00, HTSUS, as other threaded articles. Pursuant to 19 U.S.C. 1625(c)(1)), Customs intends to revoke *NY* D80181 and *DD* 877436, and to modify *NY* 834307, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in *HQ* 964412, *HQ* 964413, and *HQ* 964414, which are set forth as "Attachment D," "Attachment E," and "Attachment F" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: August 29, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, January 12, 1989.

CLA-2-73:S:N:N1:118 834307
Category: Classification
Tariff No. 7318.12.0000 and 7326.90.9090

MR. ALEX ROMERO JR.
A.F. ROMERO & CO., INC.
477 Railroad Blvd.
P.O. Box 989
Calexico, CA 92231-0989

Re: The tariff classification of steel eye lag screws, steel hangers, from Mexico.

DEAR MR. ROMERO:

In your letter dated November 28, 1988, you requested a tariff classification ruling on behalf of your client, Fabril Corporation.

You submitted two steel flat eye lag screws as samples. They are both approximately 3¼ inches in length and have diameters of approximately ¼ inch. One of the screws has a steel

wire twisted through the eye of the screw. In use the screw will be twisted into a wooden beam and the wire will be connected to a T-bar framework for suspending acoustical ceilings. You say the eye lag screws will be imported both, without attached wires, and with attached wires which may vary in length between two and twenty feet.

This classification decision is under the Harmonized Tariff Schedule of the United States (HTS), effective January 1, 1989, subject to changes before the effective date.

The applicable HTS subheading for the steel flat eye lag screws will be 7318.12.0000, which provides for wood screws. The rate of duty will be 12.5 percent ad valorem.

The applicable HTS subheading for the steel flat eye lag screws with the steel wire attached through the eye in the spade will be 7326.90.9090, which provides for other articles of iron or steel, other. The rate of duty will be 5.7 percent ad valorem.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Los Angeles, CA, September 4, 1992.

CLA-2-73 L:C:TTBV:C16 877436
Category: Classification
Tariff No. 7318.12.0000

MR. WALTER ZIMMER
OMNITRANS CORPORATION LTD.
111 Broadway
New York, NY 10006

Re: The tariff classification of acoustical lag screws from Japan.

DEAR MR. ZIMMER:

In your letter dated August 14, 1992, on behalf of Fastener Specialties Inc., you requested a tariff classification ruling.

You submitted with your inquiry a sample of the acoustical lag screw. The lag screws are flat eye lag screws made of steel, zinc plated and are available In lengths of 3, 4 and 5 inches. The screw will be twisted into a wooden beam and by attaching a wire through the screw-eye, it will support the framework for a suspended acoustical ceiling.

The applicable subheading for the acoustical lag screw will be 7318.12.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Other wood screws. The rate of duty will be 12.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN H. HEINRICH,
District Director.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, July 20, 1998.

CLA–2–73:RR:NC:1:118 D80181
Category: Classification
Tariff No. 7318.12.0000

MR. LEO W. PARTYKA
LEO W. PARTYKA, INC.
2300 E. Higgins Road, Suite 303
Elk Grove Village, IL 60007

Re: The tariff classification of lag screws from China.

DEAR MR. PARTYKA:

In your letter dated July 10, 1998, you requested a tariff classification ruling, on behalf of Convenience Concepts Inc., Medinah, IL.

The subject items, noted on your submitted sample package as part no. 5051, are described as lag screws. They are approximately 2¾" in length and are made of steel. These screws are intended to be used in suspended ceiling installations.

The applicable subheading for the lag screws will be 7318.12.1000, Harmonized Tariff Schedule of the United States, which provides for screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers, (including spring washers) and similar articles of iron or steel: threaded articles: other wood screws. The duty rate will be 12.5% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kathy Campanelli at 212–466–5492.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 964412 JAS
Category: Classification
Tariff No. 7318.19.00

MR. ALEX ROMERO, JR.
A. F. ROMERO & CO., INC.
477 Railroad Blvd.
P.O. Box 989
Calexico, CA 92231–0989

Re: *NY* 834307 Modified; Steel Eye Lag Screws.

DEAR MR. ROMERO:

In *NY* 834307, which the then-Area Director of Customs (now the Director of Customs National Commodity Specialist Division), New York, issued to you on January 12, 1989, on behalf of Fabril Corporation, steel eye lag screws, among other goods, were held to be classifiable in subheading 7318.12.00, Harmonized Tariff Schedule of the United States (HTSUS), as other wood screws. We have reconsidered this classification and now believe that it is incorrect.

Facts:

The lag eye screws are of iron or steel construction and measure between 3 and 3 ¼ inches long and ¼ inch in diameter. The fasteners have tapered points and a steep cutting thread on one half of the fastener, and an unthreaded shank portion in the middle which culminates in a flat, paddle-shaped end with a circular eye cut in the middle. In use, these fasteners will be screwed into a beam or other wood portion of a ceiling and a T-bar framework for suspended acoustical ceilings secured by wires inserted through the eye.

The HTSUS provisions under consideration are as follows:

7318	Screws, bolts, nuts, coach screws * * * and similar articles of iron or steel:
7318.12.00	Other wood screws
	Other screws and bolts, whether or not with their nuts or washers:
7318.15.50	Studs
7318.19.00	Other

Issue:

Whether lag eye screws of iron or steel are provided for in heading 7318 as wood screws or as other threaded fasteners.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In general, screws are externally threaded fasteners capable of being inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing the head. The ENs, on p. 1117 state that screws for wood differ from bolts and screws for metal in that they are tapered and pointed, and they have a steeper cutting thread since they have to bite their own way into the material. Further, wood screws almost always have slotted or recessed heads and they are never used with nuts.

Lag eye screws have tapered points and steep cutting threads common to wood screws, but lack slotted or recessed heads. The eye lag screws at issue lack a significant design feature of wood screws. In addition, heads are the means by which screws are normally tightened or released. In this case however, while the paddle-shaped end functions as the means by which this fastener is tightened or released, this end also has an eye, which is also the means by which the T-bar framework is suspended. This fastener has a significant, additional function not associated with other screws of subheading 7318.15, HTSUS. *See HQ* 959570, dated December 20, 1996.

Because these fasteners are designed so that one end is secured in a surface leaving a protuberance to which something else is attached, we considered whether they might be *studs* under subheading 731 8.15.50, HTSUS. However, the Courts have held that while the term *stud* is broadly defined and encompasses a number of articles, normally, the shank of a stud is embedded in a surface, leaving a threaded protuberance exposed to which an attachment might be made with a nut or otherwise. *See Fastening Devices. Inc. et al v. United States*, 40 Cust. Ct. 345, C.D. 2004 (1958). The eye lag screws do not function in this manner.

Finally, the Courts have held that reference to a "basket" provision such as subheading 7318.19.00, HTSUS, is proper only when no other provision describes the merchandise more specifically. *See Hafele America Co.. Ltd.*, Slip Op. 94–1 88 (Ct. Int'l Trade, decided December 12, 1994). Such is the case here.

Holding:

There being no more specific provision describing this merchandise, we find that under the authority of GRI 1, the steel eye lag screws are provided for in heading 7318. They are classifiable in subheading 7318.19.00, HTSUS.

NY 834307, dated January 12,1989, is modified as to this merchandise.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 964413 JAS
Category: Classification
Tariff No. 7318.19.00

MR. WALTER ZIMMER
OMNITRANS CORPORATION, LTD.
111 Broadway
New York, NY 10006

Re: *DD* 877436 Revoked; Acoustical Lag Screws.

DEAR MR. ZIMMER:

In *DD* 877436, which the District (now Port) Director of Customs, Los Angeles, issued to you on September 4, 1992, on behalf of Fastener Specialties, Inc., acoustical lag screws of zinc-plated steel, were held to be classifiable in subheading 7318.12.00, Harmonized Tariff Schedule of the United States (HTSUS), as other wood screws. We have reconsidered this classification and now believe that it is incorrect.

Facts:

The screws were said to be available in lengths of 3, 4, and 5 inches. They have tapered points and a steep cutting thread on one half of the fastener, and an unthreaded shank portion in the middle which culminates in a flat, paddle-shaped end with a circular eye cut in the middle. In use, the screws will be twisted into a wooden beam and by attaching a wire through the screweye, will support the framework for a suspended acoustical ceiling.

The HTSUS provisions under consideration are as follows:

7318	Screws, bolts, nuts, coach screws * * * and similar articles of iron or steel:
7318.12.00	Other wood screws
	Other screws and bolts, whether or not with their nuts or washers:
7318.15.50	Studs
7318.19.00	Other

Issue:

Whether lag eye screws of iron or steel are provided for in heading 7318 as wood screws or as other threaded fasteners.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Cus-

toms believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In general, screws are externally threaded fasteners capable of being inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing the head. The ENs, on p. 1117 state that screws for wood differ from bolts and screws for metal in that they are tapered and pointed, and they have a steeper cutting thread since they have to bite their own way into the material. Further, wood screws almost always have slotted or recessed heads and they are never used with nuts.

Lag eye screws have tapered points and steep cutting threads common to wood screws, but lack slotted or recessed heads. The eye lag screws at issue lack a significant design feature of wood screws. In addition, heads are the means by which screws are normally tightened or released. In this case however, while the paddle-shaped end functions as the means by which this fastener is tightened or released, this end also has an eye, which is also the means by which the T-bar framework is suspended. This fastener has a significant, additional design feature that imparts a function not associated with other screws of subheading 7318.15, HTSUS. *See HQ* 959570, dated December 20, 1996.

Because these fasteners are designed so that one end is secured in a surface leaving a protuberance to which something else is attached, consideration was given to the provision for "studs" of subheading 7318.15.50, HTSUS. However, the Courts have held that while the term *stud* is broadly defined and encompasses a number of articles, normally, the shank of a stud is embedded in a surface, leaving a threaded protuberance exposed to which an attachment might be made with a nut or otherwise. *See Fastening Devices. Inc. et al v. United States*, 40 Cust. Ct. 345, C.D. 2004 (1958). The eye lag screws do not function in this manner.

Finally, the Courts have held that reference to a "basket" provision such as subheading 7318.19.00, HTSUS, is proper only when no other provision describes the merchandise more specifically. *See Hafele America Co.. Ltd.*, Slip Op. 94–1 88 (Ct. Int'l Trade, decided December 12, 1994). Such is the case here.

Holding:

There being no more specific provision describing this merchandise, we find that under the authority of GRI 1, the steel eye lag screws are provided for in heading 7318. They are classifiable in subheading 7318.19.00, HTSUS.

DD 877436, dated September 4, 1992, revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 964414 JAS
Category: Classification
Tariff No. 7318.19.00

MR. LEO W. PARTYKA
LEO W. PARTYKA, INC.
2300 E. Higgins Road, Suite 303
Elk Grove, IL 60007

Re: *NY* D80181 Revoked; Lag Screws.

DEAR MR. PARTYKA:

In *NY* D80181, which the Director of Customs National Commodity Specialist Division, New York, issued to you on July 20, 1998, on behalf of Convenience Concepts Inc., certain lag screws were held to be classifiable in subheading 7318.12.10 (now 12.00), Harmonized

Tariff Schedule of the United States (HTSUS), as other wood screws. We have reconsidered this classification and now believe that it is incorrect.

Facts:

The lag eye screws, noted on the sample package you submitted as part no. 5051 were described as lag screws. They are of steel construction, approximately 2 ¾ inches long, and are used in suspended ceiling installations. They were not further described.

The HTSUS provisions under consideration are as follows:

7318	Screws, bolts, nuts, coach screws * * * and similar articles of iron or steel:
7318.12.00	Other wood screws
	Other screws and bolts, whether or not with their nuts or washers:
7318.15.50	Studs
7318.19.00	Other

Issue:

Whether steel lag screws are provided for in heading 7318 as wood screws, as other screws, or as other threaded fasteners.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In general, screws are externally threaded fasteners capable of being inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing the head. The ENs, on p. 1117 state that screws for wood differ from bolts and screws for metal in that they are tapered and pointed, and they have a steeper cutting thread since they have to bite their own way into the material. Further, wood screws almost always have slotted or recessed heads and they are never used with nuts. Lag eye screws have tapered points and steep cutting threads common to wood screws, but lack slotted or recessed heads. The eye lag screws at issue lack a significant design feature of wood screws. In addition, heads are the means by which screws are normally tightened or released. In this case however, while the paddle-shaped end functions as the means by which this fastener is tightened or released, this end also has an eye, which is also the means by which the T-bar framework is suspended. This fastener has a significant, additional design feature that imparts a function not associated with other screws of subheading 7318.15, HTSUS. *See HQ* 959570, dated December 20, 1996.

Because these fasteners are designed so that one end is secured in a surface leaving a protuberance to which something else is attached, we considered whether they might be *studs* under subheading 7318.15.50, HTSUS. However, the Courts have held that while the term *stud* is broadly defined and encompasses a number of articles, normally, the shank of a stud is embedded in a surface, leaving a threaded protuberance exposed to which an attachment might be made with a nut or otherwise. *See Fastening Devices, Inc. et al v. United States*, 40 Cust. Ct. 345, C.D. 2004 (1958). The eye lag screws do not function in this manner.

Finally, the Courts have held that reference to a "basket" provision such as subheading 7318.19.00, HTSUS, is proper only when no other provision describes the merchandise more specifically. *See Hafele America Co., Ltd.*, Slip Op. 94–188 (Ct. Int'l Trade, decided December 12, 1994). Such is the case here.

Holding:

There being no more specific provision describing this merchandise, we find that under the authority of GRI 1, the steel eye lag screws noted on the submitted sample package as

part no. 5051, are provided for in heading 7318. They are classifiable in subheading 7318.19.00, HTSUS.

NY D80181, dated July 20, 1998, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF CERTAIN SHAMPOOS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation and modification of classification ruling letters and revocation of treatment relating to the classification of certain shampoo products.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke and modify several ruling letters pertaining to the tariff classification of certain shampoo products and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before October 13, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: General Classification Branch, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, N.W., Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202–927–1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts

are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify or revoke several ruling letters pertaining to the tariff classification of certain types of shampoos. Although in this notice Customs is specifically referring to New York Ruling Letters (NY) 863843, 863846, 805283 and B83221, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY 863843, dated July 2, 1991, the classification of a product commonly referred to as Welandol Antiseptic Shampoo was determined to be classified in subheading 3004.90.6003, HTSUS, which provides for medicaments for other veterinary use packaged for retail sale. This ruling letter is set forth in "Attachment A" to this document.

In NY 863846, dated July 5, 1991, the classification of a product commonly referred to as K.F.L. Insecticide Shampoo was determined to be classified in subheading 3808.10.2000, HTSUS, which provides for other aromatic insecticide preparations. This ruling letter is set forth in "Attachment B" to this document.

In NY 805283, dated February 23, 1995, the classification of a product commonly referred to as "KOPIX" was determined to be classified in subheading 3003.90.0000, HTSUS, which provides for medicaments, * * * consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms of packings for retail sale, other. This ruling letter is set forth in "Attachment C" to this document

In NY B83221, dated March 31, 1997, the classification of a product commonly referred to as "Nizoral® (ketoconazole) 2% shampoo" was determined to be classified in subheading 3004.90.9010, HTSUS, which provides for medicaments * * * put up in measured doses or in forms or packings for retail sale; other. This ruling letter is set forth in "Attachment D" to this document.

Since the issuance of these rulings, Customs has had a chance to review the classifications of the merchandise in the rulings and has determined that the classifications are in error. The correct classification of Nizoral® (ketoconazole) 2% shampoo is subheading 3305.10, HTSUS, which provides for preparations for use on the hair; shampoos. The correct classification of Welandol Antiseptic Shampoo and K.F.L. Shampoo is subheading 3307.90.0000, HTSUS, which provides for cosmetic or toilet preparations, not elsewhere specified or included. The correct classification of "KOPIX" is subheading 3824.90.2800, HTSUS, which provides for mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances; other.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify or revoke NY 863843, 863846, 805283 and B83221 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters (HQ) 963705, 963706, 963707 and 963708 (*see* Attachments "E" through "H" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 24, 2000.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, July 2, 1991.

CLA30:S:N:N1:238 863843
Category: Classification
Tariff No. 3004.90.6003 and 3808.40.1000

MR. JEROME SCHRAUB
MI-TU INSTRUCTIONAL SERVICES INC.
P.O. Box 346, Alden Manor Branch
Floral Park, NY 11003

Re: The tariff classification of Metophane Anesthetic, Pellitol Ointment, Weladol Shampoo, and Weladol Disinfectant packaged for retail sale from Ireland.

DEAR MR. SCHRAUB:

In your letter dated May 1, 1991 you requested a tariff classification ruling on behalf of your client, Pitman-Moore.

The Metofane is a general inhalation anesthetic used in veterinary surgery. Pellitol is an antiseptic-protective ointment used on small animals. Weladol Antiseptic Shampoo contains 1% iodine and produces a shiny coat on domestic animals. Weladol Disinfectant is a general purpose iodine disinfectant preparation with broad spectrum bactericidal, fungicidal and viricidal action which also cleans and sanitizes.

The applicable subheading for the Metofane Anesthetic, the Pellitol Ointment, and Weladol Antiseptic Shampoo will be 3004.90.6003 Harmonized Tariff Schedule of the United States (HTS), which provides for other medicaments for other veterinary use packaged for retail sale. The rate of duty will be 6.3 percent ad valorem.

The applicable subheading for the Weladol Disinfectant will be 3808.40.1000 Harmonized Tariff Schedule of the United States (HTS), which provides for aromatic disinfectant preparations packaged for retail sale. The rate of duty will be 1.8 cents per kilogram plus 9.7 percent ad valorem.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443–3380.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (*19 C.F.R. 177*).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, July 5, 1991.

CLA30:S:N:N1:238 863846
Category: Classification
Tariff No. 3004.90.6003 and 3808.10.2000

MR. JEROME SCHRAUB
MI-TU INSTRUCTIONAL SERVICES INC.
P.O. Box 346, Alden Manor Branch
Floral Park, NY 11003

Re: The tariff classification of veterinary health preparations for retail sale: Totalon, Diryl, and K.F.L. from Ireland.

DEAR MR. SCHRAUB:

In your letter dated May 1, 1991 you requested a tariff classification ruling on behalf of your client, Pitman-Moore, Inc.

Totalon containing levamisole is a broad spectrum anthelmintic solution used topically on cattle. Diryl containing carbaryl, pyrethrins, and piperonyl butoxide is an insecticidal powder for animals. K.F.L. containing synergized pyrethrins is used as an insecticide shampoo for fast, effective results against fleas and ticks on domestic animals.

The applicable subheading for the Totalon will be 3004.90.6003, Harmonized Tariff Schedule of the United States (HTS), which provides for other medicaments for other veterinary use packaged for retail sale.

The rate of duty will be 6.3 percent ad valorem.

The applicable subheading for the Diryl and K.F.L. preparations will be 3808.10.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for other aromatic insecticide preparations.

The rate of duty will be 1.8 cents per kilogram plus 9.7 percent ad valorem.

Your inquiry does not provide enough information for us to give a classification ruling on V-Tergent 8X. Your request for a classification ruling should include a complete chemical composition with percentage by weight of each ingredient and a sample.

Totalon may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443–3380.

Diryl and K.F.L. may be subject to the regulations of the Environmental Protection Agency. You may contact them at 401 M Street, S.W., Washington, D.C. 20460, telephone number (202) 382– 2090.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (*19 C.F.R. 177*).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 23, 1995.

CLA–2–30:S:N:N7:238 805283
Category: Classification
Tariff No. 3003.90.0000

MS. JOAN M. STIEFEL
STIEFEL LABORATORIES, INC.
P.O. Box 10855
Rockville, MD 20849–0855

Re: The tariff classification of "KOPIX", in bulk form, from Belize.

DEAR MS. STIEFEL:

In your letter dated November 30, 1994, you requested a tariff classification ruling.

The submitted sample, which you designate as "KOPIX", is a mixture of a coal tar extract (USP grade) and a vegetable oil. It will be used as a raw material in the manufacture of a shampoo for dry scalp.

The applicable subheading for "KOPIX", in bulk form, will be 3003.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for: "Medicaments * * * consisting of two or more constituents which have mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Other." The rate of duty will be free.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443–6553.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (*19 C.F.R. 177*).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 31, 1997.

CLA–2–30:RR:NC:2:238 B83221
Category: Classification
Tariff No. 3004.90.9010

ROBERT J. LEO, ESQ.
MEEKS & SHEPPARD
330 Madison Avenue, 39th Floor
New York, NY 10017

Re: The tariff classification of **Nizoral® (ketoconazole) 2% Shampoo**, put up in 4 fl. oz. plastic bottles, from Belgium.

DEAR MR. LEO:

In your letter dated March 12, 1997, on behalf of your client, Janssen Pharmaceutica Inc., you requested a tariff classification ruling.

The submitted, sample, Nizoral® (ketoconazole) 2% Shampoo, consists of a plastip bottle containing four fluid ounces of a red-orange liquid. The shanpoo contains 2% ketoco-

nazole (an antifungal drug), as the active ingredient, and, according to lie product label, can only be dispensed by prescription. According to the *Physician's Desk Reference (1997)*, the subject product is indicated for the reduction of scaling due to dandruff.

The applicable subheading for the subject product will be 3004.90.9010, Harmonized Tariff Schedule of the United States (HTS), which provides for: "Medicaments * * * consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Other: knti-infective medicaments: Other." The rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443–6553.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National lirport Specialist Cornelius Reilly at 212–466–5770.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Coirmodity Specialist Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963705ptl
Category: Classification
Tariff No. 3307.90.0000

MR. JEROME SCHRAUB
MI-TU INSTRUCTIONAL SERVICES INC.
P.O. Box 346
Alden Manor Branch
Floral Park, NY 110037

Re: K.F.L. Insecticidal Shampoo; NY 863846 modified.

DEAR MR. SCHRAUB:

In NY 863846, issued July 5, 1991, to you on behalf of your client, Pitman-Moore, by the Director, Customs National Commodity Specialist Division, New York, among the articles classified under the Harmonized Tariff Schedule of the United States (HTSUS), was a product identified as K.F.L. Insecticidal Shampoo (K.F.L.). K.F.L. was classified, in subheading 3808.10.2000, HTSUS, which provides for other aromatic insecticide preparations. We have reconsidered that ruling and determined that the classification of K.F.L. was incorrect. The correct classification of K.F.L. is in subheading 3307.90.0000, HTSUS, pursuant to the analysis set forth below.

Facts:

The product identified as K.F.L., contains synergized pyrethrins and is used as an insecticide shampoo for fast, effective results against fleas and ticks on domestic animals.

Issue:

What is the classification of K.F.L. Insecticidal Shampoo?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1,

that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2000 HTSUS headings under consideration are as follows:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
* * * * * * *	
3307.90.0000	Other
3808	Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers):
3808.10	Insecticides:
* * * * * * *	
	Other:
	Containing any aromatic or modified aromatic insecticide:
* * * * * * *	
3808.10.2500	Other

In its 23rd Session, held in May 1999, the Harmonized System Committee (HSC) decided, pursuant to GRI 1, that certain "special" (medicinal) shampoos were properly classified in subheading 3305.10, HTS, which provides for shampoos. (see Annex IJ/2 to HSC Document NC0090E1, May 1999).

Heading 3305, HTSUS, covers preparations for use on the hair and subheading 3305.10.000, HTSUS, covers shampoos. The ENs to heading 33.05 state that:

> "This heading covers:
> (1) Shampoos, containing soap or other organic surface-active agents (see Note 1(c) to Chapter 34 [which excludes such products from coverage in that Chapter]), and other shampoos. All these shampoos may contain subsidiary pharmaceutical or disinfectant constituents, even if they have therapeutic or prophylactic properties (see Note 1(d) to Chapter 30 [discussed above]).

The ENs make it clear that all products which are presented as shampoos, whether or not they contain any "special" or subsidiary constituents, are to be classified in subheading 3305.10 which specifically covers shampoos.

The K.F.L. being classified is also a shampoo, however, it is one intended for animal rather than human use. Heading 3307 covers cosmetic and toilet preparations, not elsewhere specified or included. A consistent application of the principle that shampoos should be classified as shampoos even if they contain special or subsidiary constituents, such as, in this case, insecticides, requires us to classify K.F.L. in heading 3307, HTSUS. This classification is reinforced by the ENs to heading 33.07 which state: "This heading covers: * * * (V) Other products, such as, * * * (6) Animal toilet preparations, such as dog shampoos, and plumage-improving washes for birds."

Holding:

K.F.L. insecticide shampoo is classified in subheading 3307.90.0000, HTSUS, which provides for Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: Other.

NY 863846, dated July 2, 1991, is modified in accordance with this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963706ptl
Category: Classification
Tariff No. 3307.90.0000

MR. JEROME SCHRAUB
MI-TU INSTRUCTIONAL SERVICES INC.
P.O. Box 346
Alden Manor Branch
Floral Park, NY 110037

Re: Tariff Classification of Weladol Antiseptic Shampoo; NY 863843 modified.

DEAR MR. SCHRAUB:

In NY 863843, issued July 2, 1991, to you on behalf of your client, Pitman-Moore, the Director, Customs National Commodity Specialist Division, New York, among several products classified under the Harmonized Tariff Schedule of the United States (HTSUS), one, identified as Weladol Antiseptic Shampoo, was classified in subheading 3004.90.6003, HTSUS, which provides for medicaments for other veterinary use packaged for retail sale. We have reconsidered that ruling and determined that the classification of Weladol Antiseptic Shampoo is incorrect. The correct classification of Weladol Antiseptic Shampoo is in subheading 3307.90.0000, HTSUS, pursuant to the analysis set forth below.

Facts:

Weladol Antiseptic Shampoo is said to contain 1% iodine and is used to produce a shiny coat on domestic animals.

Issue:

What is the classification of Weladol Antiseptic Shampoo?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2000 HTSUS headings under consideration are as follows:

3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale:
* * * * * * *	
3004.90	Other:
* * * * * * *	
3004.90.90	Other
3004.90.9003	For veterinary use
3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
* * * * * * *	
3307.90.0000	Other

NY 863848 classified Weladol Antiseptic Shampoo in heading 3004, HTSUS. That heading is contained in Chapter 30. When we refer to the Chapter Notes to Chapter 30, we see that they provide:

1. This chapter does not cover:

* * * * * * *

(d) Preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties.

Therefore, we must determine whether Weladol Antiseptic Shampoo is a preparation of headings 3303 to 3307. If it is, the product cannot be classified in heading 3004, HTSUS. Chapter Note 3 to Chapter 33 states:

"(3) Headings 3303 to 3307 apply *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use."

In its 23rd Session, held in May 1999, the Harmonized System Committee (HSC) decided, pursuant to GRI 1, that certain "special" (medicinal) shampoos were properly classified in subheading 3305.10, HTS, which provides for shampoos. (see Annex IJ/2 to HSC Document NC0090E1, May 1999).

Heading 3305, HTSUS, covers preparations for use on the hair and subheading 3305.10.000, HTSUS, covers shampoos. The ENs to heading 33.05 state that:

"This heading covers:

(1) Shampoos, containing soap or other organic surface-active agents (see Note 1(c) to Chapter 34 [which excludes such products from coverage in that Chapter]), and other shampoos. All these shampoos may contain subsidiary pharmaceutical or disinfectant constituents, even if they have therapeutic or prophylactic properties (see Note 1(d) to Chapter 30 [discussed above]).

The ENs make it clear that all products which are presented as shampoos, whether or not they contain any "special" or subsidiary constituents, are to be classified in subheading 3305.10 which specifically covers shampoos.

The Weladol Antiseptic Shampoo being classified is also a shampoo, however, it is one intended for animal rather than human use. Heading 3307 covers cosmetic and toilet preparations, not elsewhere specified or included. A consistent application of the principle that shampoos should be classified as shampoos even if they contain special or subsidiary constituents, such as, in this case, iodine, requires us to classify Weladol Antiseptic Shampoo in heading 3307. This classification is reinforced by the ENs to heading 33.07 which state: "This heading covers: * * * (V) Other products, such as, * * * (6) Animal toilet preparations, such as dog shampoos, and plumage-improving washes for birds."

Holding:

Weladol Antiseptic Shampoo insecticide shampoo is classified in subheading 3307.90.0000, HTSUS, which provides for Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: Other.

NY 863843, dated July 2, 1991, is modified in accordance with this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963707ptl
Category: Classification
Tariff No. 3305.10.0000

ROBERT J. LEO, ESQ.
MEEKS & SHEPPARD
330 Madison Avenue, 39th Floor
New York, NY 11003

Re: Nizoral® (ketoconazole) 2% Shampoo; NY B83221 revoked.

DEAR MR. LEO:

In NY B83221, dated March 31, 1997, issued to you on behalf of Janssen Pharmaceutica, Inc., by the Director, Customs National Commodity Specialist Division, New York, a product, identified as Nizoral® (ketoconazole) 2% Shampoo was classified under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 3004.90.9010, HTSUS, which provides for medicaments * * * put up in measured doses or in forms or packings for retail sale; other. We have reconsidered that ruling and determined that the classification was incorrect. The correct classification for the product is in subheading 3305.10.0000, HTSUS, pursuant to the analysis set forth below.

Facts:

The product, identified as "Nizoral® (ketoconazole) 2% Shampoo" in NY B83221, is a shampoo. Ketoconazole is an antifungal drug which, when added to shampoo, is said to reduce scaling due to dandruff.

Issue:

What is the classification of Nizoral® (ketoconazole) 2% Shampoo?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale:
* * * * * * *	
3004.90	Other:
* * * * * * *	
3004.90.9000	Other
* * * * * * *	
	Other
* * * * * * *	
3004.90.9010	Other.
3305	Preparations for use on the hair:
3305.10.0000	Shampoos

NY B823221 classified the "Nizoral® (ketoconazole) 2% Shampoo" in heading 3004, HTSUS. That heading is contained in Chapter 30. When we refer to the Chapter Notes to Chapter 30, we see that they provide:

1. This chapter does not cover:

* * * * * * *

(d) Preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties.

Therefore, we must determine whether "Nizoral® (ketoconazole) 2% Shampoo" is a preparation of headings 3303 to 3307. If it is, the product cannot be classified in heading 3004, HTSUS.

Chapter Note 3 to Chapter 33 states:

"(3) Headings 3303 to 3307 apply *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use."

Heading 3305, HTSUS, covers preparations for use on the hair and subheading 3305.10.000, HTSUS, covers shampoos. The ENs to heading 33.05 state that:

"This heading covers:

(1) Shampoos, containing soap or other organic surface-active agents (see Note 1(c) to Chapter 34 [which excludes such products from coverage in that Chapter]), and other shampoos. All these shampoos may contain subsidiary pharmaceutical or disinfectant constituents, even if they have therapeutic or prophylactic properties (see Note 1(d) to Chapter 30 [discussed above]).

The ENs make it clear that all products which are presented as shampoos, whether or not they contain any "special" or subsidiary constituents, are to be classified in subheading 3305.10 which specifically covers shampoos.

Nizoral® (ketoconazole) 2% Shampoo clearly falls within the description of products contemplated by the ENs of heading 3305. It also falls within the scope of the relevant chapter notes. Accordingly, pursuant to GRI 1, Note 1(d) to Chapter 30 and Note 3 to Chapter 33, Nizoral® (ketoconazole) 2% Shampoo is classified in subheading 3305.10.0000, HTSUS. This classification is consistent with a May 1999 decision of the Harmonized System Committee which decided to classify "Nizoral" shampoo in heading 33.05 (Annex IJ/2 to HSC Document NC0090E1, May 1999).

Holding:

Nizoral® (ketoconazole) 2% Shampoo, is classified in subheading 3305.10.0000, HTSUS, which provides for [p]reparations for use on the hair: [s]hampoos.

NY B83221, issued March 31, 1997, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963708ptl
Category: Classification
Tariff No. 3824.90.2800

MS. JOAN M. STIEFEL
STIEFEL LABORATORIES, INC.
P.O. Box 10855
Rockville, MD 20849–0855

Re: "KOPIX"; NY 805283 revoked.

DEAR MS. STIEFEL:

In NY 805283, issued to you on February 23, 1995, by the Director, Customs National Commodity Specialist Division, New York, a product identified as "KOPIX", which would be imported in bulk form, was classified under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 3003.90.0000, HTSUS, which provides for Medicaments * * * consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: other. We have reconsidered that ruling and determined that the classification was incorrect. The correct classification for the articles is in subheading 3824.90.2800, HTSUS, pursuant to the analysis set forth below.

Facts:

The merchandise identified as "KOPIX" in NY 805283, is a proprietary mixture of a peanut oil extract and a crude coal tar extract. The oily yellowish brown liquid is to be imported in bulk and will be used as a raw material in the manufacture of a shampoo for dry scalp.

Issue:

What is the classification of the product "KOPIX"?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3003	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale:
* * * * * * *	
3003.90.0000	Other
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:
* * * * * * *	
3824.90	Other
* * * * * * *	

		Other
*	*	* * * * * * *
3824.90.2800		Other.

The article being classified is a specially formulated raw material which is to be used in the manufacture of a shampoo. When NY 805283 was issued, Customs was interpreting the provisions of the HTSUS in such a way that shampoos which were claimed to provide some medical benefit were classified as medicaments in Chapter 30. Because the "KOPIX" was an active ingredient of the shampoo, it was classified in that chapter also.

However, Customs now believes that by applying the GRIs as instructed, and referring to the terms of the headings, shampoos are classified in subheading 3305.10, HTSUS. This classification is reinforced by the language of the ENs to heading 33.05 which state:

> This heading covers:
>
> (1) Shampoos containing soap or other organic surface-active agents (see Note 1(c) to Chapter 34), and other shampoos. All these shampoos may contain subsidiary pharmaceutical or disinfectant constituents, even if they have therapeutic or prophylactic properties (see Note 1(d) to Chapter 30).
>
> Note 1(d) to Chapter 30 states that "This Chapter [Pharmaceutical Products] does not cover * * * (d) Preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties."

Since "KOPIX" is imported in bulk, as an ingredient, it is not classifiable as a shampoo. By virtue of GRI 1, based upon its formulation, "KOPIX" is properly classified in subheading 3824.90.2800, HTSUS, because it is a mixture containing 5 percent or more by weight of one or more aromatic or modified aromatic substances.

Holding:

"KOPIX" imported in bulk form, is classified in subheading 3824.90.2800, HTSUS, which provides for [p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: [o]ther: [o]ther.

NY 805283, issued February 23, 1995, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF A RULING LETTER AND REVOCATION OF TARIFF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN WOMEN'S GARMENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the tariff classification of certain women's knit garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of certain women's knit garments and revoking any treatment previously accorded by Customs to substantially identical merchandise. Notice of the proposed modification was published in the CUSTOMS BULLETIN of July 19, 2000, Vol. 34, No. 29. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, at (202) 927–2394.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter (Title VI) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are informed compliance and shared responsibility. These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade communities responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In New York Ruling (NY) D86889, dated February 22, 1999, Customs classified three garments at issue, as outerwear under headings 6110 and 6114 of the Harmonized Tariff Schedule of the United States (HTSUS). It is now Customs determination that the garments are classifiable as sleepwear in heading 6108, HTSUS.

Customs is modifying NY D86889 and any other ruling not specifically identified, in order to classify this merchandise under heading 6108. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

Headquarters Ruling (HQ) 962827, revoking NY D86889 is set forth as "Attachment" to this document.

As stated in the proposed notice, this modification will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: August 29, 2000.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 29, 2000.
CLA–2 RR:CR:TE 962827 RH
Category: Classification
Tariff Nos. 6108.31.0010 and 6108.91.0030

ALLISON M. BARON, ESQ.
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
Seventy-five Broad Street
New York, NY 10004

Re: Request for Reconsideration of NY D86889; Women's Underwear; Loungewear; Sleepwear.

DEAR MS. BARON:

This is in reply to your letter of April 27, 1999, requesting reconsideration of New York Ruling Letter D86889, dated February 22, 1999, concerning the classification of certain women's garments. Your request is on behalf of your client, Donna Karan Intimates, a division of Wacoal America, Inc.

Members of my staff met with you and your client on March 10, 2000, to discuss the issues raised in this case.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY D86889 was published on July 19, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 29. No comments were received.

Facts:

The merchandise at issue consists of three styles of garments, which are described in NY D86889 as follows:

> Style 446004 is described as a boy-leg brief constructed from 65% cotton, 35% polyester pointelle knit fabric. The garment has a ½ inch elasticized waistband and leg openings that are finished with a one-inch rib knit band.
>
> Style 462004 is a top constructed from 65% cotton, 35% polyester pointelle knit fabric. The top has ¼ inch shoulder straps, one-inch side slits, and a hemmed bottom. The upper edge of the back of the garment is cut straight across, from side seam to side seam.
>
> Style 462003 is a pullover constructed from 65% cotton, 35% polyester pointelle knit fabric with more than nine stitches per two centimeters in the horizontal direction. The pullover has a rib knit V-shaped neckline, short sleeves, one-inch slits, and a hemmed bottom.

You do not contest the classification of style 462009 in NY D86889.

Issue:

Are the garments in question classifiable as outerwear, underwear or sleepwear?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, taken in their appropriate order.

In past rulings, Customs has stated that the crucial factor in the classification of a garment is the garment itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), aff'd 786 F.2d 1144 (Ct. of App'ls for Fed. Cir., April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with a garment which is ambiguous and not clearly recognizable as sleepwear, underwear, loungewear or outerwear, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. For instance, Customs recognizes that internal documentation and descriptions on invoices may be self-serving as was noted by the court in *Regaliti, Inc. v. United States*, 16 Ct. Int'l Trade 407 (1992).

Consideration of marketing information, and the design and construction details of the garments are instructive in determining whether or not they are principally used as outerwear or underwear. Additional U.S. Rule of Interpretation 1(a), HTSUSA, provides that in the absence of context to the contrary, a tariff classification controlled by use, other than actual use, is to be determined by the principal use in the United States at, or immediately prior to, the date of importation of goods of the same class or kind of merchandise.

In holding that the garments would not be principally used in the United States as underwear, Customs classified styles 446004 and 462004 in heading 6114, HTSUSA, which provides for other garments, knitted or crocheted. Customs classified style 462003 in heading 6110, HTSUSA, which encompasses sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted.

In support of your claim that the garments are principally used as underwear, you submitted a letter from the President of Donna Karan Intimates and DKNY Underwear Division of Wacoal America, Inc., stating that the styles at issue are considered underwear. The letter reads, in part:

> The styles referenced in this letter are designed to reflect the latest trend in women's foundation garments. However, each garment is also designed to ensure that it will be physically suitable for its intended purpose as a foundation piece to be worn under outerwear garments. For example, none of the subject styles feature snaps or buttons that will interfere with the wearer's outerwear blouse, skirt, or pants. Similarly, while all of these styles feature seams and stitching designed to indicate that these components are "luxury" garments, these same seams are only found in the areas that will enhance, rather than distort, their use as underwear.

Additionally, you submitted a letter from the Nordstrom department store stating that the store purchases all of Wacoal's products for the intimate apparel and sleepwear departments and they are sold to the consumer as intimate apparel and sleepwear.

Notwithstanding the statements of intent to market the garments as underwear, we find that the garments do not support such classification. The garments are not form fitting and it appears they would interfere with the drapability of a garment worn over them. Moreover, your client acknowledged during the meeting that sleepwear buyers in department stores ultimately purchased the garments.

Classification of garments as sleepwear is also based upon use. In Mast, *supra*, the Court of International Trade cited several lexicographic sources, among them *Webster's Third New International Dictionary*, which defined "nightclothes" as "garments to be worn to bed." Customs also refers to the *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88 (1988), for guidance in determining whether a garment has characteristics of sleepwear. At page twenty-four, the *Guidelines* state that "the term 'nightwear' means 'sleepwear' so that certain garments worn in bed in the daytime * * * are included."

In our view, the garments in question are lightweight, loose fitting, extremely soft and sheer and are of the kind principally used as sleepwear in the United States. Thus, they are more specifically provided for as sleepwear in heading 6108 and are not classified as other garments in heading 6114.

Holding:

NY D86889 is MODIFIED.

If imported separately, or without a matching component to comprise pajamas, the garments at issue are classifiable as other sleepwear garments in subheading 6108.91.0030, HTSUSA. This provision provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Other: Of cotton: Other." Goods classified in subheading 6108.91.0030, HTSUSA, are dutiable at the general column one rate of 8.7 percent *ad valorem* and are subject to textile category 350.

If imported in shipments containing equal numbers (pairs) of matching tops and bottoms, the garments will be classified as women's knit pajamas in subheading 6108.31.0010, HTSUSA. This provision provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Nightdresses and pajamas: Of cotton: Women's." Goods classified in subheading 6108.31.0010, HTSUSA, are dutiable at the general column one rate of 8.7 percent *ad valorem* and are subject to textile category 351.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part

categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

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